Proceedings of the Council

OF THE

LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

Vol. IV.—1870.

Published by authority of the Council.

Calcutta:
PRINTED AT THE BENGAL SECRETARIAT PRESS.
1871.

Erratum.

At the foot of page 104, last line, omit "and the Bill was read in Council," and insert—
"The Rules having been suspended, the Bill was then read in Council"

INDEX TO VOL. IV.

A.

C.

D.

INDEX.

INDEX.

W

PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE

Purpose of making Laws and Regulations.

Saturday, the 8th January 1870.

Present:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*

T. H. Cowie, Esq., *Advocate-General,*
The Hon'ble Ashley Eden,
A. Money, Esq., C.B.,
A. R. Thompson, Esq.,
H. Knowles, Esq.,
Baboo Peary Chand Mittra,
T. Alcock, Esq.,
H. H. Sutherland, Esq.,
Rajah Satyanund Ghosal,
Baboo Isser Chunder Ghosal,
and
Baboo Chunder Mohun Chatterjee.

CALCUTTA PORT IMPROVEMENT.

The Hon'ble Ashley Eden moved for leave to bring in a Bill better to provide for the maintenance and improvement of the Port of Calcutta. In doing so, he said that it would be in the recollection of the Council that last year when the Council discussed this subject and passed an Act for carrying on the provisions of the existing law for the working of the Port, it was understood to be of a temporary and provisional character; that Act was merely intended to enable the work to go on pending a final decision regarding the constitution of the permanent body which was to carry on the work. There had been a great deal of discussion on the subject both before and since the passing of that Act, and the result was the present Bill, which had been published, and which it was now proposed to lay before the Council. It was hardly possible, where there were so many different ideas as to how the Commission entrusted with the conservancy and improvement of the Port should be constituted, to meet the views of all parties, and he thought that the proposed Bill must be considered in the nature of a compromise and that it would provide a workable Commission. The Chamber of Commerce had suggested a body of fifteen Commissioners, and the Lieutenant-Governor proposed ten. There were others again who thought it should be in the hands of one man. The Government of India had, however, determined to ask the Council to constitute a Commission of seven Members, out of whom one should be the Chairman and another Vice-Chairman. The whole executive authority was originally proposed by the Government of India to be placed in the hands of the Chairman, the other Members forming a sort of consultative body; but on the representation of the Chamber of Commerce and the Lieutenant-Governor that this would not meet the views of the non-official community, that point was conceded, and the Commissioners would be a body of men with full administrative power. As the Bill stood, the Chairman was to be the Executive Officer of the Commission. But, when the Bill was referred to a Select Committee, he (Mr. Eden) intended to propose, in accordance with the views of the

Lieutenant-Governor, an amendment to the effect that the paid Officer of the Commission should be the Vice-Chairman, who should also be nominated by the Government. The Chairman would be selected from the Commissioners as the person who, from his position and experience, might be expected to exercise great authority and command the respect of the public generally. He might be either official or non-official. He would be a man, however, having his own work to attend to, and could not therefore be expected to give up all his time to the detailed work of the Commission; thus it was therefore proposed to entrust to the Vice-Chairman, who would be the paid Officer of the Commission. This was not provided for as the Bill stood he (Mr. Eden) would propose the amendment in Committee, and if it met with the approval of the Council, the Bill could be amended accordingly.

As he had said before, the Bill had already been published, and it would not therefore be necessary for him to go into the details. The Commission would be composed of seven Members partly official and partly non-official, and care would be taken by the Executive Government that the non-official interests would be very fully and adequately represented. The Municipality would probably not be directly represented; but as the majority of the Commissioners would, as a matter of course, be also Justices, their interests would be duly guarded. In other respects the details of the Bill followed very much the present Act as regards meetings and the powers of the Commission. There had been considerable discussion about the financial position of the Commission, and, practically, no doubt the Government would have to advance a great portion of the funds necessary for carrying on works for the improvement of the Port. At all events the credit of the Government would be so far pledged as to make it necessary that the Government should exercise considerable control and supervision over the proceedings of the Commission. The Bill was therefore so framed as to enable the Government to be well informed as to the proceedings of the Commission, in order that the credit of the Government should not be pledged indirectly without its knowledge, and the Lieutenant-Governor would have the power to prevent any improper application of the funds. The scheme, so far as the objects of the Bill were concerned, was exactly what the Council had lately sanctioned in the temporary measure passed last year.

The motion was agreed to.

The Council was adjourned to Saturday, the 15th instant.

Saturday, the 15th January 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*

THE HON'BLE ASHLEY EDEN,
A. MONEY, ESQ., C.B.,
H. H. SUTHERLAND, ESQ.,
RAJAH SATYANUND GHOSAL,
BABOO ISSUR CHUNDER GHOSAL,
BABOO CHUNDER MOHUN CHATTERJEE,
T. M. ROBINSON, ESQ.,
F. F. WYMAN, ESQ.,
AND
BABOO JOTLENDRO MOHUN TAGORE

NEW MEMBERS

MR. ROBINSON AND MR. WYMAN took the oath of allegiance, and the oath that they would faithfully fulfil the duties of their office.

BABOO JOTEENDRO MOHUN TAGORE made a solemn declaration of allegiance, and that he would faithfully fulfil the duties of his office.

CALCUTTA PORT IMPROVEMENT.

THE HON'BLE ASHLEY EDEN moved that the Bill better to provide for the maintenance and improvement of the Port of Calcutta be read in Council. In doing so, he said that he

had explained at the last meeting the circumstances under which the Bill was introduced, and as the Bill had since been circulated, he would now explain briefly some of its chief provisions The Bill commenced by authorizing the Lieutenant-Governor to nominate and appoint seven Commissioners, one of whom would be the Chairman who should exercise the executive powers of the Commissioners. But it was intended when the Bill was in a more advanced stage to propose that there should be two officers nominated by Government, the Chairman and a Vice-Chairman. The Vice-Chairman would hold the position assigned by the Bill to the Chairman, and would be the paid working man. The Chairman would be the head of the Board, but would not be in charge of the details of the Board's work. The Commissioners were declared to be a corporation, and would take over the amount of debt due to the Government for improvements effected in the Port, not in connection with the ordinary Port Fund, but such debts as were incurred in connection with the late improvement of the landing accommodation of the Port, that is to say for such works as the construction of the Jetties and the improvement of the Strand Bank, which had lately been made either by the Government under the temporary Act of last year, or by the Trust constituted under the provisions of the Act previously existing. It was hard to say at present what the amount expended for such improvement actually was, but the matter would be enquired into by the Select Committee to whom the Bill would be referred, and a Schedule of the cost of these works would be annexed to the Bill.

By Section 11 the Lieutenant-Governor was empowered to remove the Chairman or Vice-Chairman, or any Commissioner. It was not intended that Section 18 should remain as it stood in the Bill: it provided a penalty on any Chairman, Vice-Chairman, Commissioner, officer or servant who was interested in a contract entered into with the Commissioners. Practically if the Commissioners were interested in any contract made by themselves, they could, under the operation of the Section to which he had previously referred, be removed from office; therefore it was not necessary that the provisions of Section 18 should apply to the Commissioners, and the Section would be altered accordingly.

Section 24 and the following Sections provided for the conduct of meetings for the transaction of business. Section 26 provided that a copy of every resolution should be sent to the Lieutenant-Governor, and that the Lieutenant-Governor might, if he thought fit, disallow any resolution, which would cease to have effect from the date of such disallowance Under Section 29 as it stood the Chairman or Vice-Chairman was required to attend daily at the office of the Commissioners for the transaction of business, but as it was proposed to amend the Bill, the Vice-Chairman would be the working member, and it would be his duty to attend daily for the carrying out of the detailed work of the Commission. The works which the Commissioners would be authorized to undertake were enumerated in Section 37, viz., wharves, quays, stages, jetties, and piers, tramways, warehouses, and sheds for conveying and storing goods, the laying down of moorings and the erection of cranes, and the like, the reclaiming and raising of the river bed within the Port; the construction and application of dredges for cleaning and improving the river bed, and the construction without the Port of such works as shall be necessary for the protection of works executed under the Act. The operations of the Board would be entirely confined to the Port, and they would have nothing to do with any improvements that might be undertaken beyond the limits of the Port, except so far as they affected the Board's works in the Port. Then the Commissioners were by Section 38 required to submit to the Lieutenant-Governor within six months, or such further period as he might direct, a general scheme for the improvement of the Port, and when such scheme was approved by the Lieutenant-Governor, the Commissioners were empowered, by Section 42, to raise money, for the construction of the works so approved, to the amount of one and a half crores. The money might be raised by debentures, and the interest on such debentures would after reserving liens or freights or charges, be a first charge on all property of the Commissioners, and the tolls and duties leviable under the Act the surplus income of the Commissioners being applied either in paying off the debentures or invested in Government Securities for that purpose.

Under Section 53 care was to be taken to provide sufficient landing places for the landing free of charge of such articles as bricks, tiles, lime, vegetables, fruit, meat, &c. It would be a question for the Select Committee whether it was necessary to exempt these articles absolutely from the payment of tolls, or whether a small rate should not be imposed. By the next Section the rights of the public were protected by the provision requiring sufficient ghats to be provided. By Section 58 a scale of tolls was to be laid down for the use of the wharves and jetties of the Commissioners, and for the recovery of such tolls the Commissioners would have a lien on the goods landed; and by Section 61 a ship-owner could reserve his lien for freight by giving notice to the Commissioners which would compel them to retain the goods pending the adjustment of the ship-owner's lien. Under Section 63 the Commissioners would have power, after the expiration of two months, to sell the goods for the payment of their own tolls and the discharge of the ship-owner's lien for freight in cases in which notice of such lien had been given. By Section 65 power was given to the Lieutenant-Governor with regard to the mooring and unmooring of ships for the purpose of loading and unloading cargo, and for the carrying out of the powers so conferred the provisions of the Port Act were extended to all regulations made under this Act. Some power of this sort seemed necessary, otherwise there would be great confusion in bringing ships up, and the wharves and jetties would be liable to injury. Lastly, under Section 82 the Government would have the power, after giving six months' notice, to revoke the powers of the Commissioners and take possession of their works and property if sufficient reason for so doing was shown.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of Mr. Sutherland, Mr. Robinson, Mr. Wyman, and the Mover.

THE COURT OF WARDS.

Mr. Money postponed the motion, which stood in the List of Business, for the consideration of the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Court of Wards within the Provinces under the control of the Lieutenant-Governor of Bengal.

The Council was adjourned to Saturday, the 22nd instant.

Saturday, the 22nd January 1870.

Present:

His Honor the Lieutenant-Governor of Bengal, *Presiding*.

T. H. Cowie, Esq., *Advocate-General*,
The Hon'ble Ashley Eden,
A. Money, Esq., C.B.,
A. R. Thompson, Esq.,
Rajah Satyanund Ghosal,
Baboo Chunder Mohun Chatterjee,
T. M. Robinson, Esq.,
F. F. Wyman, Esq.,
and
Baboo Joteendro Mohun Tagore.

VILLAGE CHOWKEEDARS.

Mr. Rivers Thompson moved for leave to bring in a Bill to provide for the appointment and maintenance of village chowkeedars.

He said that the subject, the discussion of which the Council was now approaching for the purpose of legislation, was one which had very largely occupied the attention of the Government during the last thirty years; and though in dealing with it the Bill primarily concerned only the status of a very humble individual in the social scale—the well-known and much abused "village chowkeedar,"—it would be found, he thought, as their deliberations proceeded, that the object and purport of any measure

connected with the appointment and maintenance of a village police had an important bearing not only upon the well-being of the individual himself, but also upon the welfare and proper administration of the country at large. The truth of such a statement would be at once apparent, when it was remembered that a village watch, under one denomination or another, and under varying conditions as to its constitution and character, was found to be in existence in the present day in every district in the Lower Provinces.

He would not attempt to detain the Council, on the present occasion at least, with any lengthened review of the early history of the institution, partly because there were elements of controversy in the consideration of the older laws and prescription on which the rights of the landholders, the village communities, and the Government, were respectively based as regards the organization of the village police, and it was desirable, at least at this stage of the enquiry, that all questions of controversy should be avoided. It was also the case that for any right comprehension of the relative positions of the several parties concerned, a much longer disquisition would be necessary than could possibly be attempted on the present occasion, and the necessity for such a course was less important because the whole subject had been fully discussed in all its details in the recent report of Mr. D. J. McNeile. However much we might differ from the conclusions at which that gentleman had arrived for the effective organization of the village watch, this much was certain that he had embodied in that report the results of a very long and careful research into the entire subject, and to the pages of his book he (Mr. Thompson) would refer those who would desire to be informed of the origin and constitution of the village police in the different parts of the country under this Government.

He would omit, then, all reference in his present address to the status of the village policeman anterior to or at the time of the decennial settlement. It was possible that in the course of their deliberations questions might arise which would entail a reference to the earlier Regulations, but, as far as concerned the measure now before the Council, attention was rather required to existing facts than to those which existed long ago; and he could assure the Council that there was ample material in the long discussions and reports which had arisen within the last quarter of a century to occupy their full attention in legislating upon this subject.

It was necessary that the Council should bear in mind that in dealing with this question they had to deal with it in a double aspect. It would be in their knowledge that the two great divisions which came before them were—the subject as it had reference to the village police to whom lands had been assigned as a remuneration of their service, and the village police who, as they now existed in a great portion of the Lower Provinces, were nominally in receipt of money payments. Whatever might have been the origin of these different systems, the fact was a patent one, and, he must say, added to the complications and difficulties which surrounded the subject. It should also be remembered that those two great divisions were sub-divided into numerous others; and that while the land-holding police (if he might so term them) contained wealthy occupiers of extensive estates (though to these there need be little reference in the present measure), they also comprised the holders of petty tenures down to even three or four beegahs: and as regards the money-receiving police, which prevailed under numerous denominations in the Eastern Districts of Bengal especially, the village watchman was a dependant for the payment of his services upon the good-will simply of the community in which he lived.

In both these systems of rural police it was the opinion, he might safely say, of all who had either considered the subject from writings, or who had been brought into contact with it practically in the executive administration of the country, that anomalies and irregularities and defects existed which demanded the interference of the Legislature with a view to revision and reform. The object of his present address was to solicit their co-operation in placing this institution upon a satisfactory footing.

He would detain them but a short time to explain the grounds on which the necessity for interference rested.

If regard be had, first, to the village police whose remuneration was secured by assignments of land, it might be said generally of them (leaving aside for the present the controverted points which had at times arisen as to the relative rights of zemindars and the Government as to the nomination and services of such police officers) that wherever they existed, in some form or another they had by long use, if not by positive enactment, owed a divided allegiance between the landholder and the executive authorities under Government. Now the evils which arose from this service of two masters were found to be so serious that any measure which would remove them would be of very great value. In the first place it would put a stop to the frequent unsatisfactory contentions which had been too prevalent for many years, leading to expense and litigation even up to the highest tribunal in England. It would put an end to the anomalous position of the village police officer, who, distracted now by a double service, was in the habit of playing off one master against another to the discontent of both, and, what was worse, to the almost entire neglect of the duties for which he held his lands. If the Council regarded but cursorily what the present calls upon him were, the difficulties of his position would at once be recognized. If it be (as some held) that such a chowkeydar holding lands in a zemindar's estate was, by the nature of his tenure, in the first instance bound to the service of the zemmdar; that during the day he could be employed in the collection of rents, in the summoning of refractory tenants, in attendance upon journeys, and duties of this kind; he must be, he (Mr. Thompson) conceived, a mortal of different constitution to ourselves if he could during the night discharge properly the functions which devolved upon him as the guardian and protector of the lives and property of the community to which he belonged. It scarcely needed the experience of many years and the reports of many officials to convince us that the double duty could not be performed. The very labors which were necessary in the tillage of his land to give him subsistence, incapacitated him for the toils and watchfulness of the night. The result had been an entire failure of the duties of a public character appertaining to his position, which might just as well have been secured by the abolition of the office itself.

In places where the opposite principle was in force, and the chowkeydar had to look for his pay to the villagers whom he served, the same result of the utter inefficiency of the system was ascertained, though admittedly from different causes. The theory was this, that the chowkeydar in these villages should be nominated to his post by the headman of the village, sometimes with and sometimes without the consent of the zemindar, and subject, he (Mr. Thompson) believed, to the confirmation of the Magistrate of the district. On his appointment the chowkeydar received a list of the villagers and the amount which each resident was bound to contribute to his maintenance. The assessment, he (Mr. Thompson) believed, was most inequitable and unfair. The zemindar paid nothing, the richer people paid little, and the poorer classes, if they gave anything, contributed in the form of grain and clothing. The wages were nominally fixed from Rs. 2-8 to Rs. 4, and the consequence might be imagined that from every district in Bengal the complaint arose not only that the pay was inadequate, nor only that they were always in arrears, but what was the special thorn in every Magistrate's side, that there was absolutely no provision in any law by which he could interpose his authority for the realization of the arrears due from defaulters.

It must be clear that if there was any particle of truth in the above description, the entire system condemned itself; and that under such a system it was impossible to look for an efficient police organization among village communities. Endeavours had from time to time been made, both by administrative arrangements and applications to the Legislature, to secure a reform of the rules in force for the appointment and employment of the rural police; but while the executive officers were powerless in the absence of any legal authority for their action, all attempts hitherto made to legislate on the subject had failed. He (Mr. Thompson) found that about eleven years ago a Bill, with the object of reforming the rural police,

was introduced into the Legislative Council as then constituted by Mr. Ricketts, a gentleman who had enjoyed a very large experience of the provinces under the Bengal Government, and who had always evinced the keenest interest in the wants and necessities of the people of Bengal. His Bill, though referred to a Select Committee for report, had not proceeded further; but still from the discussions which then took place a knowledge was gained of the opinions which were then prevalent of the village police in this country. The view of Mr. Ricketts of the police, as it appeared to him in 1859, was that it was an intolerable state of things for which the most stringent remedies were necessary.

He (Mr. Thompson) found, going back a few years further, an extract from a minute of Mr. Bethune, a member of the Governor General's Council, in which he spoke of the mofussil police as in a most disgraceful state, and recorded his conviction that "in proportion to the numbers more chowkeedars were found guilty of heinous crimes than persons not chowkeedars were of all offences of every kind,—in a word that by far the worst robbers in the country were the chowkeedars themselves, and that they were a curse to the country."

The same general views were confirmed by Sir John Peter Grant when Lieutenant-Governor of these Provinces, when he said that it had always appeared to him that "the local police was the worst feature in our administration. It was neither the police of the people nor the police of the Government. It was unpopular, arbitrary, and vexatious, at the same time that it was undisciplined, incapable, and ill-directed."

But perhaps the strongest testimony to the worthlessness of such an institution was what was found recorded in one of the reports of a Commission appointed several years ago when, in considering the measures which should be adopted for the improvement of the police, it seriously recommended that an order throughout the country to apprehend and confine the chowkeedars would do more to put a stop to robbery than any other measure. Well, there might be no hesitation in saying that what was pronounced by competent authorities so essentially bad in 1859 had not been improved of itself by the non-interference of Government during the last ten years. He had not extracted sensationally strong paragraphs to support the views which he wished to establish; for he might appeal to many opinions of local officers of ability which had since been published, or he might appeal to the experience of the Native Members before him, whether the present system of village police was not as bad as it could be. Within recent years Mr. Hobhouse, in reporting on the subject, had exposed the demoralised character of the rural police in the following words:—

"The next point to be considered is the organization of the force itself. As at present constituted it is radically bad. The village policeman is appointed by the zemindar and the village community, or by one of these two. He is also maintained by them either by lands, or by wages in money or kind; he is also their servant. He is a fellow villager of the villagers, and almost universally he is a tenant of the zemindar. His wages, if he is paid in money or in kind, are always ludicrously insufficient, are generally in arrears, and are seldom paid regularly. His lands, if they are sufficient for his maintenance, are also of that extent that they occupy the whole of his time to cultivate. When they are insufficient and they usually are so—and when his wages are insufficient (and they always are so—what is the village watchman to do? He must live, and he usually not only lives but thrives, and he thrives not unfrequently by being the leader and most usually by being the participator in, or the connivor at, the offences it is his duty to prevent or discover and disclose."

Great efforts had been made in recent years, and with success, to improve the position of the regular constabulary and police, which now under a special organization and department is doing good service. He (Mr. Thompson) was convinced, however, that whatever it might be in a position to achieve now in the way of an efficient performance of police requirements, its value and usefulness would be immeasurably greater if it could be supplemented in its lowest ranks by a well-ordered and well-established village watch. In the hope of securing such an object with the supersession of the present imperfect systems, he wished to introduce the present Bill, and if leave was granted he would, on an early occasion, in presenting the Bill for the consideration of the Council, state what in his opinion should be the principle on which legislation should be based.

With these remarks he begged to move for leave to bring in the Bill.

The motion was agreed to.

COURT OF WARDS.

MR. MONEY moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Court of Wards within the Provinces under the control of the Lieutenant-Governor of Bengal be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses be considered for settlement in the form recommended by the Select Committee. In doing so, he said that on one or two previous occasions in which he had had the honor to address the Council, he had entered at some length into the subject: it was quite unnecessary therefore that he should go over the same ground again, more especially as, since the Select Committee had amended the Bill, their report had been printed and circulated. He need only mention that after the Bill, as introduced, had been published, the Board of Revenue had called on all Commissioners of Divisions and Collectors of Districts to give them the advantage of their experience on the various matters affecting the Court of Wards and the management of wards' estate, regarding which the Bill proposed to legislate. Accordingly, a number of Commissioners, Collectors, and others had submitted their opinions, and from those communications he had caused to be prepared an abstract for submission to the Committee. Amongst the Commissioners who rendered most assistance by their valuable opinions were Colonel Dalton, Commissioner of Chota Nagpore, Lord Ulick Browne, Commissioner of Chittagong, Mr. Lance, Commissioner of Rajshahye, and Mr Cockerell, Commissioner of the Presidency Division; whilst amongst the various Collectors he would mention particularly Messrs. Heely, Morgan, Westland, Geddes, Reynolds, McNeile, Smith, and O'Kinealy.

The motion was agreed to.

At the request of the PRESIDENT, the Assistant Secretary read to the Council a communication, received late on the previous day from the Honorary Secretary to the British Indian Association, offering certain remarks and suggestions on some of the provisions of the Bill.

The letter having been read—

THE PRESIDENT said that the regular way of dealing with communications such as that which had just been read was for the Secretary to cause the communication to be printed and sent to Honorable Members; but as the present communication commented on some parts of a Bill to be taken into consideration to-day, he had directed the communication to be read to the Council.

The consideration of Section 1 was postponed.

Section 2 was agreed to after some verbal amendments.

Sections 3 to 7 were agreed to.

Section 8 was agreed to with a verbal amendment.

Sections 9 to 13 were agreed to.

Section 14 was as follows:—

"When the estate or lands of a ward are situate within two or more Divisions, the Board of Revenue shall determine the Court which shall have the charge of the person of the ward."

On the motion of MR. MONEY, the following words were added to the section, which was then agreed to.

"And such Court shall appoint some one of the Collectors within its own Division to exercise the duties of the Court with respect to the person of the ward."

Section 15 was agreed to.

Section 16 was passed with a verbal amendment.

Section 17 provided that the orders and proceedings of a Collector should be subject to the revision of the Court of Wards, and that an appeal from any such order or proceeding might be preferred within one month.

MR. MONEY said the object of the Bill was to leave the law as it stood at present. Under Regulation I. of 1829 the powers and authorities of the Board of Revenue as the Court of Wards were transferred to the Commissioners of Revenue, a general control and supervision being reserved to the Board; while the present Bill provided that in every matter the proceedings of the Court of Wards should be subject entirely to the control and supervision of the Board. It was thought that it would be advisable to give an appeal of right from the Collector to the Commissioner, but that it would not be advisable to give a right of appeal from the orders of the Commissioner to the Board of Revenue; that, however, would not prevent any person from petitioning the Board to revise an order of a Commissioner; but he (Mr. Money) thought it would be better to leave a discretion to the Board to receive an appeal or not, which would in fact be leaving the law as it stood at present.

The section was then passed with an addition, made on the motion of MR. MONEY, empowering the Court of Wards, if it should think fit, to revise, modify, or reverse any order or proceeding of a Collector, after the lapse of the period of one month, "whether any appeal shall have been preferred or not."

Section 18 was agreed to with a verbal amendment.

Section 19 provided that on the death of a proprietor whose heirs were disqualified, the Collector should take order for the safety and preservation of any moveable property of the deceased proprietor, and of all deeds, documents, and papers relating to any portion of the property of such proprietor.

MR. WYMAN thought that "seals" should be included amongst the things that the Collector should take possession of. In Section 16 "seals" were specified as one of the things that a Collector should take charge of on assuming charge of an estate; and it appeared equally important that on the death of a proprietor whose heirs were disqualified, the Collector should take charge of "seals" as well as "deeds, documents, and papers." The insertion of the word was, moreover, necessary to secure the consistency of the two sections, which were similar in their nature. He would therefore move the insertion of the word "seals" before the word "deeds" in the ninth line of the section.

THE ADVOCATE-GENERAL said that in the section under consideration, the insertion of the word "seals" was unnecessary, as seals would be included in the term "moveable property."

MR. MONEY said that he agreed with the learned Advocate-General that seals were included in moveable property; but he thought, moreover, that Section 16 and Section 19 were quite different in their character, and were intended to meet different sets of circumstances. He was therefore opposed to the amendment.

After some further conversation, the motion was by leave withdrawn, and the section was then agreed to.

Section 22 provided for the enquiries to be made in the case of female proprietors.

THE ADVOCATE-GENERAL said he thought that the language of this section was not consistent with the provision of a previous section of the Bill, which referred to "females not deemed by the Court competent to the management of their own estates"; but this section spoke of a proprietor being reported to be disqualified "solely from being a female." If a Collector reported that a proprietor was disqualified solely from being a female, he would be reporting a disqualification not contemplated by the Act. The 2nd section of the Bill applied to females not deemed competent to the management of their own estates. It was not the mere sex, but sex coupled with a disqualification, that would entitle the Court to enquire into the competency or otherwise of a female proprietor. He would, therefore, move that in the

beginning of the section, instead of the words "If a proprietor shall be reported to be disqualified solely from being a female," the following words be substituted: "If any female proprietor shall be reported to be disqualified from incompetency to manage her estate."

The motion was carried, and the section as amended agreed to.

Section 21 was agreed to with a verbal amendment.

Section 23 provided for the production of a minor before the Collector and the making of an order for his temporary custody. The section was agreed to with the addition of the following words inserted on the motion of Mr. Money.—

"In the event of disobedience to his orders under this section, the Court may impose a fine not exceeding Rs. 500, and a daily fine not exceeding Rs. 200 until the production of the person of the minor."

Sections 23, 24, and 25 related to enquiries in the case of idiots, lunatics, and other proprietors deemed disqualified on the ground of some natural or acquired defect or infirmity.

THE ADVOCATE-GENERAL said that these sections had reference only to the case of disqualified proprietors residing in the mofussil; but a disqualified proprietor might reside within and be subject to the original jurisdiction of the High Court, whilst his estate might be in the mofussil and subject to the jurisdiction of the Court of Wards. He was not prepared with any specific amendment of these sections; but as regards Section 23, the modification would be simple, because in the Act of 1858 there was a section which provided that the superintendence of the Court of Wards should extend to the proprietors of land situate beyond the jurisdiction of the Court; but there would be some difficulty as regards proprietors of estates who were disqualified by some natural or acquired infirmity and who resided within the jurisdiction of the High Court, because this Council could not give new jurisdiction to the High Court. Under Act XXXV. of 1858, the only ground of enquiry would be idiotcy or lunacy; therefore under the 24th Section of the present Bill it would be necessary to provide some other mode of ascertaining the disqualification therein referred to.

The consideration of Sections 23, 24, and 25 was then postponed.

Section 26 provided, amongst other things, that if a testamentary guardian had been appointed, the Collector should report the fact to the Court of Wards, and state in his report whether there were any and what objections to the appointment of such testamentary guardian to be the manager and guardian of the ward.

BABOO JOTEENDRO MOHUN TAGORE said that he thought there was no necessity for instituting an enquiry as to the fitness or otherwise of the testamentary guardian. The guardian would only have charge of the ward's person, and surely the testator was best able to judge who was the fittest man to undertake that duty. If such enquiries were allowed, it would simply be permitting interference with the wishes of the testator. If, however, after a fair trial, the testamentary guardian were found incompetent, he might be removed, and the Court might appoint a guardian in his stead. For these reasons he (Baboo Joteendro Mohun Tagore) would suggest that the concluding portion of the section should stand thus:—

"If a testamentary guardian has been appointed, the Collector shall also notice the same in his report, and the appointment of such guardian shall be confirmed by the Court, reserving the power of appointing a new guardian if such testamentary guardian be found incompetent after a fair trial."

MR. MONEY said he would oppose any such amendment. The duty of the Collector did not begin after the appointment of a guardian: the appointment of the guardian was a trust reposed in the Collector, who must enquire into the fitness of the guardian to be appointed. The fact of a guardian being the testamentary guardian would not necessarily make him a fit person to act as guardian. Regulation VII. of 1799, Section 26, had enacted as follows:—

"The provisions in the preceding section are meant to include the estates of disqualified landholders under the management of Serberakars appointed by the Court of Wards under Section VIII. of Regulation X., 1793; which estates being exonerated from responsibility for the revenue assessed upon them beyond what may be realized from the rents collected by the officers entrusted with the management of them, and experience having shown that the managers elected under the above section (which directs a preference to the legal heirs

or other near relations of the proprietors, or in the event of there being no heirs or relations of this description to creditable servants of the family, and allows female proprietors, not minors, or otherwise disqualified, to recommend managers for their estates) are in general wholly disregardful of the public interest in the realization of the revenue assessed upon the estates committed to them, the above section is hereby rescinded, and the managers of the estates of disqualified landholders, which may be exonerated from responsibility for the public revenue assessed upon them, are to be hereafter chosen by the Collectors and approved by the Board of Revenue without any regard to their connection with the proprietors, or to the will of the disqualified proprietors themselves in the election of such managers, who are to be considered in every respect the officers of Government acting under the Collectors; and the latter will be held responsible for the nomination of proper persons both as to character and capacity for the trust."

He (MR. MONEY) thought the same arguments held good with regard to guardians as to managers. By the section he had just read, the original law had been changed as regards the latter; and for reasons of the same nature as those which dictated such change, he would leave to the Collector the duty and responsibility of selecting a guardian, even where a testamentary guardian had been appointed.

THE ADVOCATE-GENERAL said that he would support the amendment because he thought that the reference to the former law was beside the question. The objection to the state of the law mentioned in the Regulation was based on a very intelligible principle, that the mere fact of relationship was no security whatever that the interests of the ward would be taken care of, and therefore it was properly enacted that in selecting a manager, the choice was not to be restricted to the selection of a relative or servant. But the principle of the appointment of a testamentary guardian was different. There the person most interested, by deliberate act of his own, not liking the care of his minor to be dealt with by any mere degree of relationship, but making a selection of his own, and therefore presumably the selection of a fit person, appointed that person by his will to be the guardian of his minor. And the amendment before the Council did no more than this; it did not say that that appointment was to be binding for good, but that presumably the person best qualified to form a judgment should not be interfered with without good and just cause. Should the guardian so appointed fail in his duty, it should be competent to the Collector to remove the person appointed by the deceased proprietor.

MR. MONEY said that he would ask the Council to consider a case which had occurred. The minor proprietor of the Durbunga Estates would probably go to the Wards' Institution of Benares for his education, and possibly his tutor, who had great influence over the minor, would also accompany him. If so, it was probable, considering the efficiency of the tutor with regard to the management of the ward, that he would be held to be the best person to be appointed guardian in lieu of the English manager of the estate, who hitherto had been also the guardian of the minor. Now he (Mr. Money) thought that in a case like this it would be very much better to leave it to the discretion of the Collector to appoint the guardian most suited to the circumstances of the case. In an instance like this, the Collector would not be able to annul the appointment of the testamentary guardian, although it might be for the ward's benefit that his tutor and guardian should be one. In fact, a Collector would find it difficult to remove a testamentary guardian, unless on the clearest proof of incapacity. It was very desirable that a guardian should be a person able to exercise influence over the minor, yet under the proposed amendment it would be impossible to appoint such a person to be guardian, where a testamentary guardian had been appointed.

THE HON'BLE ASHLEY EDEN said that he was in favor of the amendment for the reasons given by the learned Advocate-General. He thought that the proprietor of an estate who appointed a guardian for his heir was the person most likely to be acquainted with the qualifications of the person whom he appointed guardian by his will, and it must be assumed that no dying man would entrust his child to a person of whose fitness he was not satisfied; it seemed absurd to say that after he had carefully and on good grounds made his own selection as to the person to whom he wished to confide his son, the Collector should come in and after a summary enquiry appoint some one else. He (Mr. Eden) saw no difficulty in the case just cited, because he thought that if the guardian appointed under the will would not take the

trouble to accompany the ward to any place where it was necessary for him to go for the purpose of education, he would by his own act become disqualified, and that would be a sufficient reason for removing him from the charge of the ward. He virtually released himself from the position in which he had been placed by the testator.

THE PRESIDENT said that he thought the consideration of the section should stand over. He was rather startled at the proposition of the Hon'ble Mover of the Bill that the Court of Wards could absolutely take away all right from the father of making any arrangement for the education and care of his son after his death. Another reason why he thought a postponement necessary was that the language of the amendment was rather vague, and he had doubts how the arrangement proposed would work in practice.

The further consideration of the section was postponed.

Section 27 provided that the Court should allow for the support of each ward and of his or her family such monthly sum as might seem fit with regard to the rank and circumstances of the parties and their indebtedness or freedom from debt.

MR. WYMAN said that he spoke with much diffidence on a question of this sort, as he had not had sufficient opportunity of making himself fully acquainted with the Bill before the Council; but it struck him that the removal of the restriction which existed in the present law as to the expenditure for a ward's support, and the policy of substituting in its stead the mere discretion of the Court, was hardly an improvement. Even supposing that the limit of ten per cent. of the revenue realized by Government from the estate was insufficient, it did not follow that it would not have been better to have extended the limit by increasing the proportion to 15 or 20 per cent. He thought that in this matter it was wise to put some restriction on the amount that might be expended. There must, under the former arrangement, be a certain accumulation of funds in every estate, and if no limit was fixed by law, the expenditure on account of a ward's support might be lavish: he thought, therefore, that it would be as well to put some restriction on the power of the Court in this matter, and he hoped that some Honorable Member more acquainted with the habits and feelings of the people might be able to propose a definite amendment on the point.

MR. MONEY said that there seemed no reason why there should be any limit placed on the discretion of the Court of Wards in fixing the allowance for the support of the ward and his family: the limit in each case should be fixed according to its peculiar circumstances. The limit, according to Regulation X. of 1793, Section 12, was ten per cent. on the revenue assessed on the ward's estate; but there was not the slightest doubt that the revenue derived from an estate bore no proportion to its profits, and therefore the application of that rule had a very unequal effect. He (MR. MONEY) was of opinion that no limit, whether it was 10, 15, or 20 per cent., would meet every case; it was better, therefore, to leave the matter to the discretion of the Court of Wards and the Board of Revenue: moreover, he saw no reason why the Court of Wards and the Board of Revenue should not have a discretion in this matter as well as in others of more importance in which a discretion was reserved.

THE ADVOCATE-GENERAL said that in supporting the section as it stood, he might mention that in the High Court on its original side the allowance to minors was fixed on the same general principle as was laid down in the section under consideration, without reference to any proportion of the income, the allowance varying with the circumstances of each case.

THE PRESIDENT said that the Assistant Secretary had pointed out that Section 17 of Regulation X. of 1793 did allow a discretion.

The section was then agreed to.

Sections 28 and 29 were agreed to.

The consideration of Section 30 was postponed.

Sections 31 to 34 were agreed to.

Section 35 was agreed to with a verbal amendment.

The consideration of Section 36 was postponed.

Section 38 empowered the Court by which any manager or guardian was appointed to remove him, and to order him to make over to such person as the Court might direct, any property in his hands, and to account for all monies received and disbursed by him; and provided that such orders might be enforced by the imprisonment in the civil jail of the person disobeying the order, and by attachment of his property until the accounts or property shall have been delivered up: and the Collector was vested with the same power as regards persons appointed by him.

Baboo Joteendro Mohun Tagore said, he thought that when the liberty of a person was at stake he ought to have the right of an appeal from the order passed on him. By the next section a fine was imposed for the non-delivery of accounts or property, and the imprisonment here provided would be in addition to the fine. He therefore thought that where an order for imprisonment was made, an appeal from such order should be allowed. He would move the addition to the section of the following words:—

"Provided that every order for imprisonment by the Court shall be subject to appeal to the Board of Revenue."

Mr. Money said that he would not object to allowing an appeal in cases where an order for imprisonment was passed. Section 17 provided that an appeal might be preferred to the Court of Wards from every order or proceeding of a Collector; therefore any person imprisoned by the Collector under Section 38 would have the right to appeal from that order. But as the Bill stood it would be in the discretion of the Board of Revenue to hear an appeal from any order or proceeding of the Court of Wards; he had no objection, however, to give an appeal as of right in cases where the order of the Court was for imprisonment.

The motion was carried, and the section was agreed to after a verbal amendment.

Sections 39 to 43 were agreed to.

Section 44 gave power to the Court to invest the surplus receipts of a ward's estate, and specified in what investments they might be applied.

Baboo Joteendro Mohun Tagore moved the omission from the section of the words "or in loans upon mortgages." He thought that it would be unsafe to permit the manager to invest the surplus proceed of a ward's estates in making loans upon mortgages: such speculations were vague and open to fraud, and he would instance the losses which it was said the Land Mortgage Bank, even under careful supervision, had sustained. Although it was provided in the Bill that "the investment of the surplus in loans on mortgages should be made by the direction and with the privity of the Court," and when "approved of by the Board of Revenue" he thought that such transactions required much more care and attention for their scrutiny than the Commissioner or the Board of Revenue could bestow on them, and that virtually they must be left in the hands of the manager, who, however, would be practically irresponsible for acts done by him *bonâ fide* and in good faith; he would therefore suggest that the manager should not be permitted to make investments in loans on mortgages.

Mr. Money said that under Section 18 of Regulation X. of 1793 if a Collector should think it unnecessary or unadvisable to appropriate the surplus receipts to the improvement of the lands already under the manager's charge, he should cause the same to be applied by the manager to the purchase of other landed property, or to interest loans on mortgages, or to the purchase of Government paper securities, as circumstances might make it preferable. He (Mr. Money) could see no special object in limiting the power of the Court of Wards in favor of a restriction of this kind. He thought that such a restriction would be prejudicial to, rather than to the advantage of the interests of the ward; and as he was aware of no instance of abuse of such power, he was of opinion that the clause should stand as it was in the Bill, which had been the law for the last eighty years.

MR. WYMAN said that the rules which held good for the management of one's own property would be the best also to apply to the care of wards' estates. Besides, it was well known that good interest meant bad security. Managers might not always have sufficient time to scrutinize the conditions and genuineness of the mortgage, and sometimes they might be indirectly interested in the transaction. He therefore thought that this class of investments should not be sanctioned.

THE ADVOCATE-GENERAL said that he thought there was another reason why the amendment should be made. The management and superintendence of the Court of Wards was only temporary, and ceased when the ward became free from any disqualification. So long as the surplus was invested in Government securities or in stock or in shares, the money could be realized at once if the owner was so disposed; but if any portion of the surplus income had been laid out in mortgages, he would find himself involved in an investment which was for a certain time unrealizable—a difficulty which it was not desirable to cast on the owner. It was quite a different thing to purchase lands, Government securities or stock, and shares, which could be realized at any time; but quite different considerations would apply to the investment of money in a mortgage, which was never immediately realizable.

MR. MONEY said that he thought no sufficient reason had been shown why surplus funds should not be invested in loans on mortgages, and he could conceive some circumstances, as where the mortgaged property adjoined the ward's, in which it would be very desirable and advisable that a loan on mortgage should be made by the ward's estate instead of by outsiders. He thought, however, that in a matter of this kind, entirely affecting the interests of the landholders, which were so fully represented by the Native Members of the Council, their wishes should be respected; and he would therefore withdraw his objection to the amendment.

The motion was carried, and the section was agreed to after some verbal amendments.

The further consideration of the Bill was postponed.

CALCUTTA WATER-SUPPLY

THE PRESIDENT said that he would mention to the Council that at the next sitting leave would be asked to bring in a Bill, and to suspend some of the Rules of the Council for the conduct of business so as to advance the Bill one or two stages, to empower the Justices of the Peace for Calcutta to levy a rate on the town for the payment of the interest due on the loan from Government for the construction of the water-works, and also for the maintenance of the necessary establishment to carry on the water-works.

The Council was adjourned to Saturday, the 29th instant.

Saturday, the 29th January 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*

T. H. COWIE, ESQ., *Advocate-General,*
THE HON'BLE ASHLEY EDEN,
A. MONEY, ESQ., C.B.,
A. R. THOMPSON, ESQ.,
V. H SCHALCH, ESQ.,
H. H. SUTHERLAND, ESQ.,
RAJAH SATYANUND GHOSAL,
BABOO ISSUR CHUNDER GHOSAL,
BABOO CHUNDER MOHUN CHATTERJEE,
T. M ROBINSON, ESQ.,
F. F. WYMAN, ESQ.,
AND
BABOO JOTEENDRO MOHUN TAGORE.

NEW MEMBER.

MR. SCHALCH took the oath of allegiance and the oath that he would faithfully fulfil the duties of his office.

CALCUTTA WATER-RATE.

MR. SCHALCH moved for leave to bring in a Bill to empower the Justices of the Peace for the town of Calcutta to levy a water-rate on the town. He said that the proposed Bill was published in the last *Gazette*, together with a statement of the objects and reasons of the Bill; but it would now be necessary for him briefly to allude to the circumstances under which it had been thought necessary to introduce the Bill. The council were aware that for a very long time the introduction of water into the town had received much consideration; in fact the idea of introducing a scheme for the supply of water dated back to the time of the old municipal commissioners and long before the present constitution of the municipality. But it was not till the year 1866 that a definite scheme was actually submitted to and approved by the Government. In that year a scheme was submitted and approved, and a contract was entered into with the well-known firm of Messrs. Brassey, Wythes and Co. for the construction of the works. With a view to meet the expenses of that construction, the Government of India very liberally came forward and placed at the disposal of the Justices a loan of 52 lakhs of Rupees on the condition that interest at 6 per cent. should be paid, and that 2 per cent. of that was to go to form a sinking fund for the repayment of the loan. The contract was entered into with Messrs. Brassey, Wythes and Co. on the condition that the work should be completed, under severe penalties for non-completion, within three years, that was to say by the 15th December 1869. The works were carried on with great energy, and were, with one exception, well executed and completed within the prescribed period. The exception referred to the great main which conducts the water from Pulta, the place whence the water was taken, to Talla in the vicinity of Calcutta. The Justices, not being satisfied that the main would bear the pressure stipulated for in the contract deed, refused to take over the works from the contractors, and the matter had thus stood over. The agent for the contractors had gone home to represent the matter to his principals, and it was hoped that the matter would be satisfactorily settled. In the meantime the agent had entered into an agreement to allow the Justices to use the main for a supply of water to the town, without prejudice to their contention as to the main, and water had been brought into the town and supplied previously to the commencement of the present year. It is, however, necessary under the existing Act that before the Justices can impose a rate on the town to cover the expenses incurred in the supply of water, they should issue a notification declaring that the supply of water to the town was complete. This they were not in a position to do, so long as they had not the entire control of the works. The town had been supplied with water free of all cost, but expense had to be incurred, not only for the maintenance of the current establishment and the supply of coals, but also on account of the extensive item of interest on the Government loan, which at 6 per cent. on 52 lakhs amounted to Rs. 3,12,000 per annum. The subject was brought before the Justices by their chairman at a late meeting, which was very numerously attended: he submitted a proposition that the house rate should be raised until such time as the Justices were able to take over the works and were thus in a position to impose a rate. After a good deal of discussion that resolution was set aside in favor of one unanimously carried with a view to the introduction of a Bill to enable the Justices at once to meet the expenditure from the commencement of the present year, and a letter in the terms of the resolution was addressed by their chairman to the Government. In accordance with that letter from the Justices the present Bill had been brought forward.

The motion was agreed to.

MR. SCHALCH then applied to the President to suspend the rules for the conduct of business to enable him to move that the Bill be read in council, with a view to its being referred to a select committee with instructions to report in three days.

THE PRESIDENT having declared the rules suspended—

MR. SCHALCH moved that the Bill be read in council. In doing so, he said that he had applied to the President to suspend the rules because it was a matter of urgent necessity

that the Justices should obtain money to meet the expenditure they were now incurring in connection with the supply of water to the town. With regard to the Bill itself, he (Mr. Schalch) would say a few words. The first section proposed to repeal Sections 12 and 13 of Act IX. of 1867. By the first of those sections it was necessary that a notification should be issued on the completion of the works; but under the circumstances which he had stated to the council the Justices were not in a position to ask the Government to issue such a notification. The other section proposed to be repealed, section 13 of Act IX. of 1867, enacted that the Justices should, after the issue of a notification, assess a water-rate on the town; but as, under the proposed Bill, a notification would not be required, it was necessary to repeal that section also. There was, however, a provision at the end of that section, with regard to the repeal of which he wished to make a few observations. By that provision the assessment of the rate was limited to those houses and premises of which there should be some portion situate within 150 yards of some stand-pipe duly charged with water. The section previous to the two sections proposed to be repealed provided that the Justices should lay down such mains and pipes and such tanks, reservoirs, or other works as should be necessary for the supply of water in all the chief public streets of the town, and should erect in the chief streets sufficient and convenient stand-pipes for the gratuitous use of the inhabitants of the town. That provision had been most fully complied with, for it would be seen, from a map which he held in his hand, that not only had the chief streets been supplied with mains and stand-pipes, but that they had been extended to almost every street, with the exception of a few small streets in which there was no thoroughfare, and streets in which from the sinuosity of their course pipes could not be laid. There was but a small proportion of houses which were not within a radius of 150 yards of a stand-pipe; there were very few not within 200 yards, and he doubted whether there were any at all which were not within 250 yards. The supply of stand-pipes was almost unlimited. A glance at the map would show that they were scattered very freely throughout the town. He did not believe there was any town in which such measures were taken for a gratuitous supply of water. He knew from his own experience that in London, with the exception of a few pumps or stand-pipes for the use of cab-horses, there were scarcely any means of obtaining the free use of water; the supply for watering the streets being kept under lock and key. Here, on the contrary, the supply had been liberal and up to the requirements of the Act, except in the case of the large villages scattered about the town, and in these it was indeed impossible to lay down pipes, because they consisted of a mass of huts without any regular roads. The Justices must have gone to the great expense of purchasing the land and pulling down the huts before they could lay down the pipes; but even in these parts of the town there was not a hut not within 250 yards of a stand pipe, because the blocks were surrounded by roads in which there were pipes. If this restriction in the existing law were retained, the rate-payers would have to pay an additional ¼ per cent. by exempting from the payment of the rate those who had every facility for using the water, and who did doubtless use it. Under these circumstances he did not think that the alteration of the law in this respect could in any way be objected to.

The second section of the Bill assigned power to assess the water-rate without regard to any notification; and the third section distinctly laid down the purposes for which it would be necessary to assess an annual rate. This would vary from year to year; and as the purposes for which the rate would be applicable would vary from year to year, it was thought desirable to lay down no maximum rate. The reason for adopting this course was two-fold. Hitherto more than once a maximum rate had been objected to on the ground that the result would be to induce the executive to frame their estimates up to the limit, and then to work up to it; and the Justices took no further interest in checking these estimates. Supposing a maximum rate to be fixed, and supposing that the bursting of pipes or other accident carried the budget beyond the limit of the rate: you would either fail in retaining the maximum rate and therefore be bound to disobey the requirements of the law in not providing the amount required to be levied for the purposes of the Act, or if you obeyed it in the latter respect you must exceed the maximum. This, however, was a question entirely for the consideration of

the council: if the council preferred it, a maximum rate could be fixed. As far as he could ascertain from the accounts, from his own knowledge of the matter, and the estimates submitted by the chairman, he thought that a 5 per cent. rate would cover the annual expenditure mentioned under this section. The existing law limited the rate to 4 per cent; but practically that was not the case, because when the scheme was under the consideration of Government the expenses were always taken at 5 lakhs a year, which is equivalent to a 5 per cent. rate. But the Justices then agreed that in consideration of the advantage that the town would derive in the watering of roads, the flushing of drains, and other municipal purposes, the municipal fund should contribute 1 lakh, leaving 4 lakhs to be raised by a rate. But latterly, when the Justices determined to reduce the house-rate, it also determined to pay no money from the municipal fund towards the expenses of the water supply and that had tended to add the extra one per cent. to the proposed water-rate. It was a fair matter for consideration, where the owners, who were very largely represented in the municipality, chose to throw over the responsibility which had been undertaken, whether some portion of the existing rate should not be thrown on the owner, instead of imposing the whole burden on the occupier. He merely threw out these suggestions for the consideration of any hon'ble member who might think them worthy of consideration.

The remaining sections of the Bill were not of importance. The 4th section provided that the water-rate should be levied in the manner provided for the levy of the rate by Act VI. of 1863, and the 5th and 6th sections related to the construction and commencement of the Act.

Mr. Sutherland said that he was sure that the council must be indebted to the hon'ble member for the clear and full history he had given of all that had taken place connected with the introduction of water into the town, and there was no one better able to state the case clearly to the council than the hon'ble member from his recent position as the head of the municipality. He (Mr. Sutherland) admitted that there was no help now but to impose a rate: the money had been expended, and the water was on, and the rate must be levied from the 1st of January. He believed that it was the general opinion that this was inevitable. With regard to the 3rd section of the Bill, he observed that the whole possible outlay was enumerated under the different heads there specified; and he admitted that none of these could well be cut out, but he sympathised to a great degree with the view taken by some hon'ble members of the council that a maximum rate was desirable. He was aware that there were objections to a maximum rate, but as on this point suggestions had been thrown out by the hon'ble mover for the consideration of the select committee, he (Mr. Sutherland) had no doubt that the subject would be fully discussed by the committee. The hon'ble member had also alluded to a matter which he (Mr. Sutherland) had been considering, *viz.*, the incidence of the assessment. The 4th Section simply stated that the rate would be levied in the manner provided by Act VI. of 1863, by Section 62 of which the rate falls exclusively on the occupier. As the matter stands at present, the mode in which the water is supplied is more suited to the watering of streets, than to the benefit of the inhabitants for household purposes. They will still have to get their supplies as heretofore at no dimunition of cost. He presumed that in all the large cities of Europe the rate was levied from the occupier, but then the proprietor laid on the pipes to the houses and the water was at the hands of the occupier. Here it was very different. He thought, moreover, that a full supply of water was a universal blessing, and for that reason alone he thought that the tax should be shared in by all persons—the absentee house owner, the value of whose property was increased, as well as the regular resident. He only threw out these observations as suggestions: this was not the time to say anything except as to the general principles of the Bill, but he threw out these remarks for the consideration of the select committee to whom the Bill would be referred.

Mr. Wyman said that there was one point to which he thought the hon'ble mover of the Bill had hardly sufficiently referred—that was the probable reduction of expenditure which the municipality would enjoy from the introduction of the water-supply. If the taxation

was to fall on the owners or occupiers of houses or both, the municipality surely should bear its share of the burden, as it would derive very considerable benefit for municipal purposes from the introduction of water: it would involve the abolition of the establishment of *bheestees* as well as do away with the necessity of water-casks. He believed that the system of watering streets by a hose, as adopted at Paris, would ultimately be introduced here, as being much more rapid, cleanly, and economical. The expense now incurred here for watering was considerable, and was paid from the general rates. Now presuming that the maximum assessment for the water-rate was fixed at 5 per cent., it should be taken into consideration whether the original amount of 4 per cent. would not be sufficient to levy, bearing in mind that though the house-rate had been fixed at 9 instead of at 10 per cent., yet the expenses of the municipality would also presumably be reduced from the causes above stated.

There were many other points to which he would like to refer, but they would doubtless come under the attention of the select committee. He strongly agreed with the hon'ble member who spoke last that a maximum rate should be fixed, and that the landlord should bear a share of the rate with his tenant, for the reason that his property would become greatly improved; for as soon as pipes were laid in a house, the chances of its letting would be much greater. And again the benefit of a water-supply was not only to occupiers, but to owners, whose property was benefited by every thing that tended to the benefit of the town.

He observed that the rate of assessment was originally fixed by Act VI. of 1863 at 2 per cent; that was repealed by Act IX. of 1867, and the rate was increased to 4 per cent. The tendency of all municipal budgets was to increase in a very alarming degree from the original estimate; and therefore, although by fixing a maximum rate there was a tendency, as the hon'ble mover of the Bill had said, to work up to that rate, still, where we saw this disposition in municipalities to go beyond original estimates, he was afraid that to give them absolute power to work up to anything their extravagance might lead them, would be an alarming and dangerous power. He observed that the Bill enacted that the water-rate should be sufficient not only to provide for the current expenses and the interest on the Government loan, but also for all expenses incurred in any amendments, reparations, and *extensions* of the works. The hon'ble mover of the Bill had just stated that he considered the supply of water provided here to be most complete and efficient, and far exceeding anything of the kind existing in England or elsewhere. He (Mr. Wyman) believed the hon'ble member was right; and since that was so, there surely could not be any necessity for extensions of the works. If liberty to extend the works was allowed, and power conferred to cover the cost of extensions by taxation, it might possibly lead to extensions never contemplated in the original scheme and which did not seem necessary. These, however, were amendments which had better be considered in committee. The motion was then agreed to and the Bill referred to a select committee consisting of Mr. Sutherland, Rajah Satyanund Ghosal, Mr. Wyman, Baboo Joteendro Mohun Tagore, and the mover, with instructions to report within three days.

COURT OF WARDS.

Mr. Money moved that the report of the select committee on the Bill to consolidate and amend the law relating to the Court of Wards within the provinces under the control of the Lieutenant-Governor of Bengal be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The consideration of sections 49, 50, and 51 was postponed.

Section 52 was agreed to.

The consideration of sections 53 to 57 was postponed.

Section 58 was agreed to.

Section 59 provided that the Court of Wards might direct that a minor should remain at the sudder station or any other place approved by the Board of Revenue, either with or without his guardian, and should attend such school or college as to the Court or Board might seem expedient, and might make such provision as might be necessary for the proper care and maintenance of the minor whilst attending a school or college.

Baboo Joteendro Mohun Tagore thought that a guardian's duty required him to remain with his ward; he could not be expected to discharge his duties a hundred miles off. If that were allowed the office of guardian would be a sinecure. In cases where the minor was sent to the sudder station, the collector, or in the Wards' Institution the superintendent, would take charge of the ward; but in other places he (Baboo Joteendro Mohun Tagore) thought the guardian should accompany the ward.

Mr. Money said that originally by Regulation X. of 1793 it was made a part of the duty of the guardian—and his chief duty—that he should take steps for the proper education of his ward. Subsequently, by Act XXVI. of 1854 the entire control and superintendence of the education of a minor ward was taken away from the guardian, and vested in the hands of the Court of Wards. He (Mr. Money) did not see that a guardian could be expected to do for his ward anything more than a father would do for his son. The office of a guardian would not cease because his ward was sent to the Wards' Institution, and there would, therefore, be no necessity for appointing the director of the Institution to be guardian. The hon'ble member had not indicated what amendment he proposed

Baboo Joteendro Mohun Tagore said that he had no amendment to propose; he only alluded to the point in the hope that His Honor the Lieutenant-Governor would take the subject into consideration when framing the rules under the Act.

The section was then agreed to with a verbal amendment.

Section 60 was agreed to.

Sections 61 to 65 were agreed to with verbal amendments.

Section 66 provided that no adoption could be made by a ward without the consent of the Lieutenant-Governor.

Baboo Joteendro Mohun Tagore asked whether the restriction imposed by this section was intended to extend to an *Onoomotro pottro*, or leave to adopt, given by a ward to his widow at his death-bed. In such cases there could possibly be no time to obtain the consent of the Lieutenant-Governor through the Court of Wards and the Board of Revenue.

The Advocate-General said that he understood the hon'ble member to refer to the case where a ward died and left a power to his widow to adopt. He should say that an infant ward, and a ward who might be a ward by reason of lunacy, could not execute any valid power to adopt.

Baboo Isser Chunder Ghosal said that by the hindoo law a person of the age of 16 years could make a will; it was only by regulation law that he was held disqualified for certain purposes till the age of 18.

The Advocate-General said that he understood that there had been a decision of the High Court on that point. There was a recent decision of a full bench that a hindoo was not of full age until he was of the age of 18.

The further consideration of the section was then proposed.

Section 67 was agreed to with slight amendments.

Section 68 was agreed to.

Section 69 provided that on the termination of a wardship, the Court of Wards shall make an order that its superintendence and jurisdiction shall cease on a date not more than sixty nor less than fifteen days from the date of the order.

THE ADVOCATE-GENERAL asked whether there was any necessity for fixing a minimum term.

MR. MONEY thought that there must be some minimum, or the Court might fix a period of two or three days for the making over of the estate.

THE ADVOCATE-GENERAL thought that it would be desirable to provide for the issue of a prospective order, as it would always be known prospectively when the superintendence of the Court would cease.

On the motion of Mr. Money, the following words were added to the section : " Until the date notified, the estate or property shall remain under the charge of the Court under this Act."

The further consideration of the section and of the Bill was then postponed.

The Council was adjourned to Wednesday, the 9th February.

Wednesday, the 9th February 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*

T. H. COWIE, ESQ., *Advocate-General.*
THE HON'BLE ASHLEY EDEN,
A. MONEY, ESQ., C.B.,
A. R. THOMPSON, ESQ.,
V. H. SCHALCH, ESQ.,
H. H. SUTHERLAND, ESQ.,
RAJAH SATYANUND GHOSAL,
BABOO ISSUR CHUNDER GHOSAL,
BABOO CHUNDER MOHUN CHATTERJEE,
T. M. ROBINSON, ESQ.,
F. F. WYMAN, ESQ.,
AND
BABOO JOTEENDRO MOHUN TAGORE.

CALCUTTA WATER-RATE.

MR. SCHALCH applied to the President to suspend the rules for the conduct of business to enable him to move that the report of the select committee on the Bill to empower the Justices of the Peace for the town of Calcutta to levy a water-rate on the town be taken into consideration in order to the settlement of the clauses of the Bill. He said that according to one of the rules of the council it was necessary that the report of a select committee should be in the hands of hon'ble members one week before the report could be taken into consideration. Practically that had been the case in regard to the present Bill, inasmuch as the report of the committee, with the Bill as proposed to be amended, had been published in the last number of the *Calcutta Gazette*; but he learned that the official copies were not circulated till a later date. Consequently it was necessary for him to ask the President to suspend the rules to enable him to move that the report of the select committee be taken into consideration.

THE PRESIDENT having declared the rules suspended—

MR. SCHALCH said that in the report of the select committee on the Bill the alterations proposed to be made were so distinctly stated that he need not trouble the council with a recapitulation of them ; but the reasons on which those amendments were founded were not given. He thought, however, that instead of taking up the time of the council at this stage, it would be sufficient for him to explain the reasons on which the chief amendments were based, when the council came to consider the several clauses of the Bill. He would only now move that the report of the select committee be taken into consideration in order to the settlement of the clauses of the Bill.

Baboo Isser Chunder Ghosal said that inasmuch as the select committee to whom the Bill was referred had wandered far out of the legitimate line of their duty in tacking on new principles to the Bill, which were not asked for by the Justices to enable them to carry on the water-works, he thought that the Bill should therefore be referred back to the select committee for the purpose of their confining themselves to the consideration of the question explained in the letter of the chairman of the Justices of the 18th of January. In altering the principles of the Bill they had gone beyond the application made to the council. The circumstance under which the Bill originated was that owing to an accident the Justices were not in a position to levy a water-rate according to the provisions of Act IX of 1867. An *ad interim* Bill of a few sections only would have been quite sufficient for the purpose, and the Justices through their chairman do not appear to have asked for more. But instead of doing that, advantage had been taken of that circumstance in the select committee to introduce new principles quite at variance with those in force and established by the legislature in previous legislation, and which principles had been discussed threadbare in passing three successive legislative enactments by the council. The committee therefore should have strictly confined themselves to the principles in force and established by the legislature, and not sought to be altered and interfered with by the municipality. But the committee, instead of making all harmonize with each other, had imported something quite in discordance with existing legislation. He therefore moved that the Bill be referred back to the select committee with instructions to restrict its provisions in conformity with the application of the chairman of the Justices, dated 18th January 1870, and to report on the same in two weeks.

The Advocate-General said that he must oppose the amendment, which had for its object the reference back of the Bill to the select committee, because it appeared to him that it proceeded on a misconception of what the scope and effect of the proposed Bill would be. He could only imagine that the amendment had been proposed on the notion that because the necessity for some measure of the kind involving the immediate imposition of the rate had been rendered necessary in consequence of the peculiar and special circumstances that had arisen, therefore the legislation should only be, as he had seen it called, of an *ad interim* character. He did not think the scope of the Bill could at all be regarded as of that character. It was plain that what we were now going to do, subject to what might be determined on as to the assessment and payment of the rate, was to levy a rate under the provisions of this Act; and the assessment of that rate would be a prominent thing and exclude the operation of those provisions of the Acts of 1863, 1866, and 1867 under which the Justices were to levy the rates leviable by those Acts on the formal completion of the works: and although the immediate reason why this had become the subject of legislation had been the exceptional and incidental circumstances stated, he apprehended it was perfectly clear that the council were now dealing with the whole matter of legislation, and would be stultifying itself if, dealing with the assessment and levying of the rate, they were to consider themselves in any way bound to the mere adaptation, with the smallest minimum amount of modification, of the principles enunciated in the earlier Acts. He was quite open to hear arguments against the principles contained in the present Bill, but it would be premature to say whether we should adopt the principle enunciated by the select committee. He could not see that the committee in any way went beyond their province, and the business of the council now was to consider whether, having regard to the circumstances, they should adhere to the amendments proposed, as being more of a permanent character, in substitution for the provisions of the earlier Acts, and thus deal with the question on its own merits. He therefore thought the original motion should be supported.

Mr. Schalch said he would also oppose the amendment. The hon'ble member seemed to have taken up the position adopted by the British Indian Association in a recent communication to the council. They seemed there to think that if the council were asked for a legislative enactment of a particular kind, they, the council, were bound to pass an enactment in accordance with the request. The duty of the council, however, was not to act as mere registrars:

their first duty was to ascertain whether there were sufficient grounds for legislation, and if they considered that there were such grounds, then it was their duty to legislate on the subject in such a manner as would be most conducive to all interests concerned. It had been said that the committee in what they had done, had proceeded beyond their province. He begged to differ from that opinion. The Bill as proposed to be amended by the select committee differed from the original Bill in only two important points. It first proposed that a proportion of the rate should be thrown on the owner instead of throwing the whole on the occupier, and then that the collection of the whole rate should be made by the owner. In proposing this the committee had not gone beyond their province. When the Bill was read in council a suggestion had been thrown out that the select committee should take into consideration the question of the incidence of the rate; and secondly, the principle of throwing the collection of the whole rate on the owner was merely an extension of the present law, by which as regards the water-rate as well as the police and lighting rates the owner had first to pay and afterwards to recover the rates due on houses of a less annual value than Rs. 100. Therefore he (Mr. Schalch) did not think that in either case the committee could be justly said to have gone beyond their province.

Baboo Isser Chunder Ghosal, with the permission of the President, begged to say that the hon'ble mover of the Bill had mistaken his views. In the amended Bill the principle announced was that ¼ of the rate should be levied from the owner. Had it been proposed to change the incidence of the rate altogether, he (Baboo Issur Chunder Ghosal) should have understood the matter; but as it was proposed to impose ¾ of the rate on one and ¼ on another, he did not know on what that principle could be based. There was also another part of the matter which had been misapprehended—

The President said that he must interrupt the hon'ble member as being out of order. Without entering into any discussion of what it would be lawful for the select committee to do or not to do, he had come to the conclusion on the whole, on an examination of the rules of the council, that it was his duty to rule that this amendment was out of order and could not be moved. The rules contained no provision whatever for referring a Bill back to the select committee after they had made their report. The rule said that the report of the committee should be taken into consideration, in order to the settlement of the clauses of the Bill, as soon as conveniently may be; and then there followed a provision by which the hon'ble member might indirectly gain his object, if the council were of opinion that the amendments of the select committee should not be considered: for the rule went on to say—"When the report is taken into consideration, it may be moved that the clauses of the Bill be considered for settlement in the form recommended by the select committee." Therefore it would be the duty of the hon'ble member in charge of the Bill to make that motion before the council proceeded to consider the Bill. If that motion was affirmed, the clauses would be so considered; if not affirmed, the clauses would be considered for settlement as they stood when the Bill was read in council.

The question that the report of the select committee be taken into consideration in order to the settlement of the clauses of the Bill was then agreed to.

Mr. Schalch then moved that the clauses of the Bill be considered in the form recommended by the select committee.

The motion was agreed to.

The consideration of Section 1 was postponed.

Section 2 was agreed to.

Section 3 provided that the water-rate should be sufficient to provide for all current expenses and for all necessary amendments and reparations, for the expenses of any extension of the water-works sanctioned by the Lieutenant-Governor, for the interest of the money borrowed, or which might hereafter be borrowed, for the construction of the works, and for the

formation of a sinking fund, with a proviso that the rate should not exceed 5 per cent. of the annual value of the houses, premises, and lands assessed therewith.

Mr. Schalch said there had been two alterations in this section; one was that every extension proposed should be subject to the sanction of the Lieutenant-Governor. As he understood, when he took charge of the Bill, by the term "extension" it was not meant to include extensions of a large kind, but such slight extensions as were rendered necessary by the laying down of pipes where they had not hitherto been laid, or where *bustees* had been brought under proper municipal control by the opening out within them of proper roads. But some of the members of the select committee seemed to fear that a powerful executive might take advantage of the provision to make large extensions, and therefore the committee agreed to limit the provision as he had just stated, and to provide that all extensions should be subject to the sanction of the Lieutenant-Governor.

The next alteration was as to the rate of 5 per cent. When the Bill was introduced, it seemed to be the general opinion that a maximum should be fixed. From the papers he had seen, he believed that the rate proposed was on the whole the lowest that could be fixed. A rate of 5 per cent. would represent about five lakhs of rupees. The interest to be paid, together with the amount to be reserved as a sinking fund, would amount to more than three lakhs, and the working establishment would cost about Rs. 1,28,000, besides contingencies and the cost of collection, which would require another Rs.10,000. This year there might be an addition of some back interest to pay; therefore a rate of 5 per cent. was certainly not too much, and would merely leave a margin of about Rs. 50,000 for repairs and the like. But although this was the maximum, there was no reason why the Justices should not limit the rate to such sum as would be necessary for the actual requirements of the town.

Baboo Issur Chunder Ghosal said he thought that the maximum rate provided in this Bill was, under present circumstances, necessary, and appeared reasonable enough. But he thought that an expression of opinion should have been made by the hon'ble member as to whether the maximum now proposed was to be the permanent rate, or whether it was proposed as an *ad interim* rate. If the formation of a sinking fund was necessary, he (Baboo Issur Chunder Ghosal) did not see why the rate should be made permanent. The town should not be charged with any rate that was not necessary. Originally, in 1863, the rate proposed and sanctioned was a rate of 2 per cent., and when the Justices came up again, in 1866, with a proposal that it should be increased to 3 per cent., this council, after a very careful and most elaborate enquiry, and a full consideration of the entire question, increased the rate to 4 per cent. of their own free and voluntary motion, in order to enable the Justices not only to meet the expenses of the time, but for future contingencies too; that is, the council of 1866 not only granted the 3 per cent. applied for by the Justices, but another per cent. over and above it as a margin for future exigencies. But the Justices had not kept faith with the legislature, and their expenditure had been so reckless, that even that large maximum was not now sufficient; and if no check were put to this waste of public money, he did not know where they were to stop. He found, amongst the discussions which took place during the passing of the Act of 1866, that Mr. Peterson, who was then a member of the council, said:—

"The estimates for carrying out the works on which these calculations were made, so far as he had been able to see, had been made at very high rates, and if they were exceeded, he could not but attribute it to mismanagement. He thought the estimates should not be allowed to ooze out, for then contractors would never be found to do the work for less, notwithstanding the fact that very high prices had been fixed and, as far as he could see, the works ought to be executed at a much smaller cost."

The hon'ble mover of the present Bill was also in charge of that Bill, and with reference to these remarks he observed:—

"With regard to the very heavy estimate spoken of, he might mention that the rates in it were purposely taken at the highest, as great doubts had been expressed as to the possibility of executing any work within the estimate."

Consequently it appeared that 4 per cent. would be quite sufficient; but if an extra one per cent. was necessary, he (Baboo Issur Chunder Ghosal) thought that it should be in the nature of an *ad interim* rate and not of a permanent tax.

Mr. Schalch said he wished to make a few remarks with reference to what had fallen from the hon'ble member. First with regard to the sinking fund. The hon'ble member seemed to think that by having a sinking fund there would be an annual decrease in the amount of interest to be paid. He (Mr. Schalch) would first mention that we were bound to pay interest at the rate of 6 per cent. until the whole loan has been paid, and of that over 2 per cent. went to a sinking fund; we would not thereby decrease the amount of interest to be paid, because, if we did so, it would take 52 years to pay off the loan. But the principle of a sinking fund was that the interest accumulated at compound interest, and so increased in contributing to the re-payment of the loan; consequently, the debt would be paid off in 32 years instead of 52 years: therefore the Justices would still have to pay annually the whole amount of interest, *viz.*, Rs. 3,12,000. As to the rate proposed in the former Act being 4 per cent., he would observe that the rate was practically a rate of 5 per cent.; for the Justices were to contribute a lakh of rupees annually, which was equivalent to a rate of one per cent. Therefore the maximum now proposed was practically the same as the maximum rate imposed by the former law.

The hon'ble member had also made some observations about reckless expenditure and waste of money, with regard to which he (Mr. Schalch) desired to make a few remarks. The whole question of the expenditure on account of the water-works had been repeatedly under discussion. The rates originally fixed were no doubt then considered high, but it had been found absolutely necessary to exceed those rates. However, the loan originally proposed was the same, and he believed the works had been executed without waste, and we were bound in any case to pay the interest. As he said before, the interest added to the amount of the working expenses and contingencies would take up nearly the whole of a 5 per cent. rate, leaving a margin of only Rs. 50,000 to meet the expense of repairs, which, though more than sufficient at present, would no doubt increase afterwards.

With regard to the permanence of the rate, this Act would remain the law until it was rescinded by some succeeding legislation; therefore it had as much permanence as the council had power to give it.

The section was then agreed to.

Section 4 provided that the rate should be payable quarterly in advance.

Mr. Robinson said, as this was the first of the clauses relating to the collection of the water-rate, he would call attention to the fact that there was no provision made for any remission of the rate in the event of the water-supply failing. When the water was once laid on, the occupier would be entirely dependent on that source for his supply, and as the works were on the constant-service system, a very slight interruption in any part of them might deprive the whole street or even two or three streets of their supply, which would put the occupier to the expense of employing bhistees and paying the water-rate at the same time. He thought the Act should provide that a remission should be granted in the event of a failure in the supply of water.

Baboo Issur Chunder Ghosal moved the omission of the whole section. It appeared to him to involve a new principle of pre-payment, which, if adopted, would create great confusion in the municipal accounts; nor did he see what peculiar benefit the municipality would wish to have at the sacrifice of the payer. He thought that the old principle, of payment after the rate was due, and after demand was made, should be adhered to. The burden would principally fall on the occupiers of houses, who are generally foreign gentlemen, and eventually be a matter of loss to them. Again, if pre-payment was to be enforced on the owners of houses, it would be felt by that body as a most grievous and particular injury done to them. Whatever good motive might underlie this measure, it will be misunderstood. For if more than 5 per

cent. be generally given by the trade for the collection of money for articles sold at large profits, do hon'ble members believe that a 2 per cent. commission would be sufficient, 1*st*, for paying hard cash out of their own pockets without any profit, and sometimes, on the contrary, at a loss; and then for collecting the same from a class of gentlemen who, the municipality have admitted, care not even for distraints. The council should be fair to all parties concerned, and remove this section from the Bill.

MR. SCHALCH said, that under the old system of collection there was a considerable loss, especially in the case of rates levied upon occupiers. It was a frequent occurrence for a person to leave a house during a quarter, and he never took the trouble of thinking whether any rate was due, and it was impossible for the municipality to know when the occupier was about to leave. The loss on this account amounted to about Rs. 3,000 on every lakh; consequently those who really paid the tax had to make up the difference, and additional taxation had to be imposed to make up this loss. He did not think that this was right, and in asking for payment in advance we did not make any unfair provision, as a re-payment was provided for such portion of the quarter during which the house remained unoccupied. He thought that practically the loss sustained in interest on pre-payment was so small, a mere fraction, that it should not be taken into consideration in comparison with the great benefit obtained by relieving the honest tax-payer from an additional burden.

THE PRESIDENT said that the amendment proposed was a mere negative of the question before the council, and therefore under the rules of the council could not be moved. The hon'ble mover of the amendment could gain his object by dividing the council on the question that the section do stand as part of the Bill.

The section was then agreed to.

Section 5 provided that the water-rate should be payable by owners.

MR. SCHALCH said that before the hon'ble member opposite (Baboo Joteendro Mohun Tagore) proposed his amendment, he would ask leave to make a few remarks. The hon'ble member on his left (Baboo Issur Chunder Ghosal) had stated that there had been no reason given for a departure from the principle at present in force of levying directly from occupiers rates payable by them, but he had undertaken, in order to save the time of the council, to state those reasons in connection with the present clause. The principal alterations of the whole Bill were included in this section. There were two principles involved: one was that this section, taken in connection with the following four sections, threw a portion of the rate on the owner, and practically the quarter and three-fourths rates were thrown respectively on the owner and on the occupier. He (Mr. Schalch) might fairly be asked what were the reasons for this change. When the Bill came before the council there was a suggestion thrown out that this question, as to whether the entire rate should be borne by the occupier, or a portion placed on the owner, should be considered. There had been a very strong feeling that it was unfair to put the whole tax on the occupier. With regard to the previous legislation on this point, he might mention that it seemed to him that it had been entirely founded on the assumption taken from the precedent of London, where the tax was levied on the occupier. But the case of London was different. In London water was supplied by private companies, but in Calcutta the water was supplied by the corporation—in fact by the rate-payers themselves. When the water was supplied by a company it was not considered advisable to give them the power of enforcing compulsory rates and any compulsory remedy; they were left to deal with those to whom they supplied the water. In all the recent instances in England, water-works had generally been constructed by the corporation, and compulsory taxation imposed for the levy of the necessary expenditure connected with the water-supply. Since introducing the Bill, he had received a copy of the report of the Royal Commission lately appointed to enquire into the best mode of extending the supply of water to London and the principal provincial towns. The

recommendations of that commission were summed up in the last page of their report. They said—

"We are of opinion that it is a matter of vital importance that an abundant supply of water should be provided for all classes of the population, as well as for general public purposes, street watering and cleansing, public fountains, and extinguishing fires.

"That for this purpose there should be a power of levying, as at Manchester, Glasgow, and elsewhere, two rates—one a special or domestic rate on all dwelling-houses, the other a public or general rate upon all rateable property; that no trading company should be permitted to levy or expend such compulsory rates, and that therefore the future control of the water-supply should be entrusted to a responsible public body, with powers conferred upon them for the purchase and extension of existing works, and for levying the rates referred to. That this plan offers the only feasible means of introducing efficiently the system of constant supply, and for securing a compulsory supply to the poor. We believe that it would tend to economy, to the improvement of the quality of the water, and to secure the proper provision for public objects, and for extinguishing fires."

Consequently it was now accepted as a principle, not only for future adoption, but actually enforced in many cases, that the rate should be divided between the occupier and owner. It was said that the owner received no benefit. This he denied. The supply of water to a town raised the value of property, and inasmuch as the comfort of the inhabitants was increased, they desired to live in that town, and thus raised the rent of property. In another part of the same report was given what the actual rule now was in Glasgow, Manchester, and Liverpool:—

"The corporation (of Manchester) are stated to have the power of levying two rates—one, a public or general rate, which is fixed at 3*d.* in the pound, and secondly, a special or domestic rate upon all dwelling-houses which is 9*d.* in the pound, making in this second class of property 1*s.* in the pound on the rateable value, or about 10½*d.* on the gross rental. For the 3*d.* rate no water is specially supplied, but the rate is a contribution for the advantages secured to the whole community by their protection in case of fire, cleansing streets, flushing sewers, &c., &c. The 9*d.* rate is for water actually supplied for domestic use."

That was the course adopted in Manchester, and it would be exactly the same in this town if the present Bill be passed. There would be paid a rate of 5 per cent., or one shilling in the pound, of which three pence or quarter would be paid by the owner, and nine pence or three-fourths by the occupier. We are therefore introducing no new principle, and if we are departing from the principle hitherto adopted here, we are departing from a wrong and vicious principle and adopting a just and right one.

The question of the proportion of the burden of taxation between the occupier and owner would come under consideration in section 7, by which the owner was empowered to recover a certain proportion of the rate from the tenant. He (Mr. Schalch) would defer his remarks on that subject for the present. The principle laid down in the section under review, was that the entire rate should be first paid by the owner, and that he should have power to recover the occupier's portion from his tenant. That was absolutely no new principle, because, by the existing law, in all cases where the annual rent was less than Rs. 100, the landlord was bound to collect and pay the rate to the Justices. The present Bill merely contained an extension of that principle which was adopted to make the matter more simple, and save time in the collection of the rate, and would probably tend to a reduction of the rate imposed. Under the present rule, for such collections as the owner had to make he received no consideration, but by this Bill he would receive a commission of 2 per cent. on all sums he paid in at an early date. However, this was not a matter of great consequence. If the council thought that the present state of things was the best, and that owners should only be required to collect the rate from the occupier in cases where the rental was under Rs. 100, he (Mr. Schalch) had no very great objection: it was not a matter of so great importance as the first principle, which necessitated the distribution of the burden of taxation between the occupier and owner. He saw that in a paper from the British Indian Association great stress was laid on the amount of losses incurred in the collection of the tax; in this matter they seem to have fallen into some errors; for in a recent memorandum he observed that the losses in levying the rate amounted to something less than Rs. 3,000 in each lakh, or about 3 per cent. Almost the whole of that loss was caused from the system of levying the rate after

the expiration of the quarter; but now payments would be made in advance, and the chief and probably the sole source of such losses would be stopped; and as the owner was empowered under the Act to recover the rate from the tenant also in advance, he would be protected from that loss. The British Indian Association seemed to think that there was a doubt on that point, but when the council came to that section he doubted not that they would have a favorable opinion on the subject from the learned Advocate-General. One principle now before the council was the proportion of taxation; the other principle was the collection through the owner. The second principle was of much less importance than the first, and the two questions should be kept separate, and not mixed up in any amendment which might be proposed.

BABOO JOTEENDRO MOHUN TAGORE said that he did not quite understand how the hon'ble member thought the principle laid down in the three different Acts of the council was "wrong" or "vicious." Whether we considered the watering of streets, the supply of drinking water to the inhabitants, or the flushing of drains, all the advantages were enjoyed by the occupier and none by the owner as such. For instance, a person might reside in the mofussil and yet be the owner of a house in town: what advantage would he derive from the water-supply works? Surely when the advantages were enjoyed by one class it was but just that they should be called on to pay, and not the owners. He did not know what the case was in other cities of Europe, but in London a different principle held good; there the tenant, and not the landlord, was called on to pay the water-rate. It was said that in the general improvement of the city, the owner should be interested; but the landlord did pay his contribution for such improvements. There was a revised assessment every three years, and whatever the improvement was the landlord contributed towards it in the shape of increased taxation. He could not be called on to pay twice for the same thing. Then as to the principle that the whole amount should be paid by the owner and a portion recovered by him from his tenant—he did not see why that principle had been adopted. The municipality had a well-organised and well-paid establishment for the collection of the rates, and if they were found unable or lax in the performance of their duty, that was no reason why the burden should be imposed on the landlord. If they had suffered a loss, much more would a private individual suffer who had not the same facilities as the Justices for recovering the rate. A private individual must resort to the small cause court to realize the smallest amount due. It would be a very strange way of indemnifying the municipality by requiring proprietors to share the loss amongst themselves. He therefore moved that Section 5 be omitted and that Section 1 of the original Bill be substituted for it.

The ADVOCATE-GENERAL said that as he had before the council an amendment which he had intended to propose, and which followed the principle of the amendment just proposed, he was bound to state briefly his reasons for coming to the conclusion to which he had come, to withdraw and not to propose this particular amendment. He might mention that in recurring, as he had proposed to do, to the principle of the Acts of 1863, 1866, and 1867, which imposed the water-rate on the occupier, he was a good deal influenced by the impression that no case had been made out for any alteration of that principle, and also what weighed a good deal with him was practically the confusion which the municipality would be introducing in collecting the rate from any one but occupiers, in the numerous cases in which the owners of houses in Calcutta were not resident in Calcutta, or in any part of the provinces subject to the jurisdiction of the Lieutenant-Governor of Bengal. In such cases the remedies for recovery by distress from the owner would prove infructuous. But he was informed by the hon'ble member in charge of the Bill, who from his antecedents must be exceedingly well-qualified from his practical experience on the subject, that as regards the house-rate, which he (the Advocate-General) referred to as illustrative of the difficulty of working the principle of assessment on owners, no difficulty had been found to exist in the realization of the rate in the case of absent owners, by reason of the provision (which would be applicable in the general Act of 1863 under this Bill) by which in the case of absent owners the rate could be recovered from the occupier, who was empowered to deduct the amount from the rent payable by him to the

owner. Therefore the difficulty which occurred to him (the Advocate-General) as regards the collection of the water-rate from absent owners would in practice not arise. With regard to the broader question as to whether or not there was reason to depart from the principle adopted in 1863, 1866, and 1867, further consideration had led him to the conclusion that in the present case we should to a limited extent depart from that principle, because we had already departed from it in the working of the existing law. Perhaps it was not quite clear whether, under the general Act of 1863 the legislature, by the completion of the works as regards the supply of water to the town, intended completion in the sense that the works were so to be introduced into the town that by the construction at the expense of some one or other of communication-pipes and other subsidiary works water should be carried to the houses, or whether the legislature intended to include the actual supply of water to the houses. On referring to the terms of the Act, he found that this principle appeared to have been adopted, that, as soon as a supply was completed, a water-rate should be imposed not exceeding two per cent. on all houses and buildings within the town, and then that in case water should be supplied in houses or buildings an additional rate of one or two per cent., rising proportionally to the height or pressure at which the water must be supplied to any particular house, should also be imposed. Then in the Act of 1866 it was enacted that every householder, instead of as under the Act of 1863 a householder not being entitled to have water supplied into his house except on the terms of his paying such additional rising rate, should be entitled to have the water supplied for domestic use on payment of a uniform rate not exceeding 4 per cent. That was based on the principle of not making the rate depend on the question whether the water was supplied for domestic use or for purposes of business. But practically under the Act of 1866 the only mode in which an occupier could obtain the benefit of having the water supplied to his house—could obtain any benefit other than from the supply of water in the streets at the stand-posts; the only mode in which he could avail himself of that direct and immediate benefit to himself and his family, which under the Act of 1866 he was to be entitled to on the payment of a uniform rate—was by his constructing the necessary communication-pipes and works at his own expense. And if he did not do that, under the Act of 1866—and the same thing was kept up under the Act of 1867—the only benefit which would result from the supply of water was to be obtained from the stand-posts. On further consideration it seemed to him, and it seemed to him now, that there would be something very unjust in the acceptance of that principle; and for this reason. If the occupier, and the occupier only, was to pay the water-rate, and he was merely to get the supply provided under the Act of 1866, he could only get a personal benefit from the supply of water by constructing the necessary communication-pipes at his own expense. The result would be that he who would mostly be an occupying tenant for a term of from two to five years, would be making a permanent addition to the value of the house, which would be of no earthly value or use to him at the expiration of that term; and that by reason of the permanent addition made at the expense of the occupier, and which would add to the value of the house, the owner would be in a position to get a better rent from a new tenant, who would have to pay the rate subject to any advantage the proprietor might derive during the period of his tenancy, and the owner would get the whole advantage as regards the permanent increase to the value of his property, at the expense, in the first instance, of the occupying tenant, and a further advantage afterwards at the expense of a succeeding tenant who paid the rate. Under these circumstances, and after having had the advantage of discussing the matter with the hon'ble member in charge of the Bill, he (the Advocate-General) came to the conclusion that it was much more equitable that there should be a division of charge between the owner and occupier. Practically he thought that there could be no question that if the owner was only to be subject to one-fourth of the rate of 5 per cent. or 1¼ per cent., he could fully recoup himself without in the least diminishing the certainty of being able to let his house in future, by increasing the rent to the extent of 1¼ per cent., which would be so inconsiderable that no person would be deterred from taking a house by reason of any such inconsiderable increase.

With regard to the reference that had been made to the state of things existing in London, he apprehended that no analogy existed. In London water, like gas, was supplied by a company and paid for as any other commodity. You paid for water and gas according to the amount of consumption. The water company turned on their mains, once or twice, he did not remember which, in the twenty-four hours, and filled the cisterns at the different houses; with regard to the dimensions of which cisterns they had complete information. As soon as the cisterns were filled no more water would go on, and the occupier had to pay for as much water as he consumed, just as he paid for so many metres of gas. With regard to the watering of streets and flushing of drains, that was to come out of the proportion of the rate paid by owners, and fell on them as a part of the house-rate; they had to pay for it just as for other improvements in the town. According to the amendment introduced in select committee, the owner would have to pay 1¼ per cent. for the advantage and convenience that he would enjoy by the general improvement of the town, in addition to the permanent improvement to the value of his house, and his being able to demand an additional rent as soon as the water could be supplied from the stand-posts into his house.

On these considerations it seemed to him, on further consideration, that the principle now proposed was far more equitable than the existing one.

The Council then divided on Baboo Joteendro Mohun Tagore's amendment:

Ayes—4	Noes—9.
Baboo Joteendro Mohun Tagore.	Mr. Wyman
,, Chunder Mohun Chatterjee	,, Robinson
,, Issur Chunder Ghosal.	,, Sutherland.
Rajah Satyanund Ghosal	,, Schalch
	,, Thompson
	,, Money
	The Hon'ble Ashley Eden.
	,, Advocate-General.
	,, President.

The motion was therefore negatived.

On the motion of THE ADVOCATE-GENERAL the words "subject to the provisions of the last preceding section" were prefixed to the section, which was then agreed to.

Section 6 was agreed to with a verbal amendment.

MR. SCHALCH said there was a somewhat peculiar under-tenure in the town, under which the land on which a house or hut was built was the property of one person, and the building the property of the tenant, who had the right to remove it. In such cases, as the law stood, the owner of the land would have to pay one-fourth of the rate assessed on the house or hut which did not belong to him; but it was not fair that the landlord should pay any portion of the rate on a house that did not belong to him, and therefore, to meet such cases, he (Mr. Schalch) would move the introduction after Section 6 of the following new section:—

"For the purposes of this Act, the owner of any land upon which any house or tenement is situate shall be deemed to be the owner of such house or tenement, and shall be liable to the payment of the water rate payable in respect of such house or tenement."

The motion was agreed to.

Section 7 was agreed to.

MR. SCHALCH then moved the introduction of the following section to carry out the principle of the section previously introduced, and to enable the owner in such cases to recover the full amount of the rate, and not only three-fourths:—

VIIA. "Whenever the owner of any land on which any house or tenement may be situated shall not be the owner of such house or tenement, and shall have paid the rate for such land and for such house or tenement, it shall be lawful for him to recover from the owner of such house or tenement, in addition to the three-fourths of the water-rate payable in respect of such land, the entire amount of the water-rate payable in respect of such house."

The motion was agreed to.

Section 8 was agreed to after several verbal amendments.

Section 9 was agreed to.

Section 10 provided that no rate should be levied on unoccupied houses.

MR. MONEY said the amendment he had to propose seemed naturally to follow from the principle adopted that one-fourth of the rate should be paid by the owner. He could see no reason why, if the principle was adopted that the owner should pay a portion of the water-rate assessed on the house, he should cease to pay such rate when the house was unoccupied. It appeared to him, individually, that instead of paying nothing or only a quarter during the time the house was unoccupied, it would be preferable to enact that the owner should pay even more, because in Calcutta the owners of houses, owing to the geographical position of the town, had a monopoly. In other towns, when the demand exceeded the supply, houses could be built without limit; but in Calcutta, shut in as it was on all sides, that was impossible, and the result was to give owners a monopoly, which enabled them to raise the rents of houses to an extent much higher than they would be able to do but for this condition. That this was the case was apparent from the fact that European residents in Calcutta paid generally a house rent out of all proportion to their means and income. One result of this monopoly is that owners are able to stand out for a rent which, under other circumstances, they would not demand. In the contest which takes place between the owner and the intending occupier the house remains unoccupied, and the occupier's portion of the rate is unpaid. But according to the Bill as it now stood, the owner's portion of the rate would also be unpaid, and consequently an increased burden would be thrown on the shoulders of other payers of the rate. For these reasons, as regarded his own views, he (Mr. Money) would be glad to see a pressure put on owners by making them pay a larger rate on unoccupied than on occupied houses. He did not anticipate, however, that such an amendment would be successful, but he did hold that, on the principle already adopted, the owner should pay one-fourth of the rate whether the house was occupied or not. It should be considered that one-fourth is the owner's contribution towards the general burden of the water-rate. As had just been remarked to him, the expenditure on account of the general conservancy of the town, the flushing of drains, and the watering of streets, went on just the same whether a house was occupied or not. He would therefore move the substitution of the following for Section 10 as it stood:—

"Three-fourths of the water-rate assessable under this Act on any house, premises, or land shall be remitted for the period during which such house, premises, or land may remain unoccupied."

MR SUTHERLAND said that he would support the amendment on the ground last stated by the hon'ble member. It appeared but fair and just that the owner should pay the rate whether his house was occupied or not.

BABOO JOTEENDRO MOHUN TAGORE said that he would certainly oppose the amendment. The amendment would have the effect of being a penalty held *in terrorem* over the proprietor to bring him to terms with the tenant; he would therefore deprecate it as an unjust interference with the rights of private property. Besides, as long as the owner did not enjoy any benefit from the house, it would be hard indeed to call on him to pay a rate for that period in order simply that he may not be able to stand out for a rent with the intending occupier.

BABOO ISSUR CHUNDER GHOSAL said that if it was the intention to put a pressure on the landlord, the amendment would fail in its object. If the owner of a property, whose annual rental was Rs. 2,000, could make up his mind to lose the entire rent, he could easily suffer the loss occasioned by the payment of his proportion of the water-rate; but if it was actually intended to put a pressure on the owner, the hon'ble member to be consistent should make the owner pay the entire amount of the rate as if the house were occupied.

MR. SCHALCH said that he thought that in considering this question, the council should look to a very similar case. By the existing law only half of the house-rate was remitted during the time a house remained unoccupied: the municipality lost half and only half. Here

they would lose the whole rate, and under the amendment proposed they would still lose three-fourths. Taking into consideration the precedent of the house-rate, he thought that it would be a fair and just provision to make the owner pay one-fourth of the water-rate even when his house remained unoccupied.

The council then divided on Mr. Money's amendment:—

Ayes.—9.	Noes—4.
Mr. Wyman.	Baboo Joteendro Mohun Tagore.
„ Robinson.	„ Chunder Mohun Chatterjee.
„ Sutherland.	„ Isser Chunder Ghosal.
„ Schalch	Rajah Satyanund Ghosal.
„ Thompson.	
„ Money	
The Hon'ble Ashley Eden.	
„ Advocate-General.	
„ President.	

The motion was therefore carried.

Section 11 was agreed to with some slight amendments.

Section 12 was agreed to.

Section 13 was passed with several verbal amendments.

Section 14 was agreed to.

Mr. Wyman said the amendment which he was about to propose comprised the addition of several sections, involving one principle however, that of compelling landlords to lay on pipes for the supply of water to houses. He was sorry that he had had occasion to differ from some of his hon'ble colleagues on the select committee in respect to this matter; but he was afraid perhaps that at the time he had not made himself completely understood. He never contemplated that it should be made compulsory on tenants to have water laid on, whether they wished it or not. But he then and still thought that every tenant should be able to compel the owner to bear a portion of the outlay in laying on service-pipes to a house,—an addition which must tend to the ultimate advantage of the owner, and add to the pecuniary value of his property. It had been urged outside that it was no more equitable to compel a landlord to lay on water than gas. But it appeared to him (Mr. Wyman) that the two cases were quite different. We had now to pay a heavy water-rate, and without the house service he considered tenants would be paying a large tax for no sufficient purpose. It never could have been contemplated that the only benefit to the householder in return for the heavy tax imposed should be the satisfaction of knowing that his *bheestie* could obtain water from a stand-post, instead of as before from a tank or aqueduct, and it was surely not just that the tenant should pay entirely the cost of an improvement which, however much it might tend to benefit himself at the time, must tend still more to the ultimate pecuniary benefit of the landlord. The fair medium seemed to be to consider the outlay in respect of the house-service in the light of an improvement to be made by the landlord at the request of the tenant, such as was frequently and willingly done by an owner in the case of additions or improvements to a house, for which a fair interest should be payable on the capital outlayed. He (Mr. Wyman) had been favored with several suggestions by his hon'ble colleagues, to whom he was much indebted; and he thought the amendments, as now drawn up, would be found to meet the views of both the occupiers and owners of houses. He observed in the last paragraph of the letter of the British Indian Association, that the terms of the amendment were commented on in a strong manner, and a wrong inference was drawn, which he regretted and wished to explain away. It was inferred that there was to be made a distinction between Europeans and Natives. If the words originally used, or the amendments which he intended to propose, could lead to such an idea, he begged to disclaim any such intention. He assumed that the introduction of water-pipes into native huts would be attended with much difficulty: further that the landlords of such would not be prepared to lay on pipes,

that the tenants would hardly require him to do so, and that the provision would most likely prove a means of oppression on the part of small tenants to sub-tenants holding under them. These were the reasons why he had confined the amendment to houses occupied by Europeans. But he entirely agreed that it would be utterly repugnant to the spirit of British legislation to introduce class distinctions such as had been assumed—distinctions he never in the least contemplated. He deemed it due to himself to make this explanation to show that he did not propose the amendments in the sense in which they had been understood.

The first section which he would propose introduced the compulsory principle. It was as follows :—

"It shall be lawful for the tenant holding direct from the owner of any house or land, by notice in writing signed by him, to require the owner of such house or land to perform all such necessary works as may be required for bringing into such house or land a proper and sufficient supply of water for domestic purposes Every such notice shall contain an undertaking on the part of such tenant to pay 12 per cent. per annum during the residue of his lease, calculated from the date of the completion of the works."

After consultation with several of his hon'ble colleagues, he came to the conclusion that a percentage would be the more equitable way of meeting the case. The laying on of water-pipes was really little different from any other improvement, and although the tenant might have a short period to run, the next tenant would doubtless be willing to pay the twelve per cent.; and on his refusing to do so, the landlord might enhance the rent or remove the pipes, thereby virtually compelling the tenant to pay. Assuming that the system was in force for ten years, the landlord would recover his outlay with interest in that period.

The next section which he (Mr. Wyman) would propose was as follows :—

"The supply to a house shall be deemed sufficient for domestic purposes if it provides the necessary works for and with a tap in each bath-room not exceeding three in each floor of such house, one other such tap in the cook-room of, or attached to such house, and one other such tap in the premises, or in or near the stables of, or attached to such house. Provided that if the annual rent of such house shall be less than Rs 300, it shall be sufficient to provide the necessary works for, or with one tap only within the said premises and provided also that this section shall not apply to huts, shops, godowns or other places of business or trade, and also to houses or buildings situate in streets, lanes, bye-lanes, or thoroughfares where water-pipes have not been laid by the Justices. Provided further that the occupier of such house or building shall keep in repair at his own expense the works laid on by the owner for such supply of water."

It was considered necessary to define the extent of house service, because otherwise there might be constant disputes between the parties. He thought that less than had been specified in the section would not be sufficient for domestic purposes. An hon'ble member had suggested the addition of the first proviso (which he (Mr. Wyman) had not thought necessary, but to which he had no objection) explaining more fully the intention of the section, with a view to guard against the making of requisitions that were not contemplated. Of course, if water-pipes had not been laid down in the street, the tenant could not ask the landlord to lay in water.

The next section stood thus :—

"In case any owner shall not within the space of two months from the service of such notice, cause such necessary works as aforesaid to be completed, it shall be lawful for the tenant who shall have given such notice to cause such necessary works to be completed, and to deduct from the rent payable by him the cost of such works by equal instalments extending over a period of not less than six months."

It was of course necessary to give the tenant power to lay on pipes if the landlord refused to do so, and it would be only fair by way of penalty to empower the tenant to deduct the cost from the rent. Although it might seem harsh to throw on the landlord the whole cost of laying on water, in such a case he brought it on himself by refusing to obey the law.

The fourth section which he proposed was :—

"No works for introducing a supply of water into any house or land shall be commenced by the owner without sending an estimate of the cost thereof to the tenant, nor by the tenant without sending such estimate to the owner."

That was a section which it was quite as well to introduce to prevent any dispute being made either by the landlord or tenant.

The fifth section ran thus:—

"In case there shall be any difference between the owner and the tenant respecting the cost or the sufficiency of the works, it shall be lawful for such owner or such tenant to refer such difference to the Justices, and the written award of the engineer of the Justices or of any officer authorized by the Justices in that behalf shall be binding on the owner and the tenant."

It was proposed to refer disputes to the arbitration of the engineer to the Justices, or other officer authorized in that behalf by the Justices, in order that the opinion of the arbitrator might be entitled to respect; and it was enacted that his award would be final.

The next section was as follows:—

"There shall be payable to the Justices in respect of every such reference the sum of Rs. 2 for every hundred rupees of the monthly rent of the house in respect of the water-supply to which the difference may have arisen, provided that such fee shall in no case exceed Rs. 10; such fee shall be paid by the person making such reference. All such works as aforesaid shall be constructed subject to the inspection and to the satisfaction of the engineer of the Justices, or of some other officer appointed by the Justices in that behalf; and for the purposes of such inspection it shall be lawful for the said engineer or other officer to enter the house or land at all reasonable times, or until the completion of such works."

It was as well to fix the fee for reference to arbitration, without which the parties might be unnecessarily delayed; and it was also necessary that the works should be constructed subject to the approval of the Justices with regard to the necessity of adopting one systematic plan of work and providing for proper efficiency.

The last section was:—

"It shall be lawful for any owner who shall have completed such works to recover from the person who shall have given such notice any sum which such person had undertaken to pay as if the same were rent payable for the house in respect to which such notice shall have been given."

There was another clause suggested which he thought might fairly be inserted, and which was proposed to be added as a proviso to the second of these sections. It would only be fair that the tenant should be required to see that the pipes were kept in proper order; otherwise on his leaving the house he might choose to pull half the pipes down, and involve the owner in extra expense on account of repairs. He might mention that as regards the justice of making this house-service compulsory on house-owners, he had taken the opportunity of consulting a very large house-owner, and although as the amendment now stood, it was not exactly in the form in which it was when the reference was made, his friend had stated that he considered a division of the expense to be equitable, and that he (the house-owner in question) was quite willing to bear his share of the cost. As far as regards the desirability of the compulsory clause, he (Mr. Wyman) believed that, failing anything of the kind, there would be constant disputes. He had heard the matter very much discussed, and divers opinions expressed. He thought that the course he proposed would save much litigation and annoyance. Further, should the system of closet drainage be introduced into houses, a full supply of water would be very necessary, and the owner would undoubtedly be the person who would then have to lay it on, and therefore the owner had not much to complain of against these clauses. Ten years hence, he believed, water-pipes in houses would be looked on as a matter of course: a man would then no more take a house without water laid on, than he would do so now in London.

With these remarks he would leave the matter in the hands of the council: and he trusted he should be considered to have consulted in the amendments as proposed equally the interest of the owner and of the tenant.

THE ADVOCATE-GENERAL said that as the amendments which had been read were very lengthy, and would probably lead to a good deal of discussion as regards both principle and details, he would ask the President, under the 9th of the rules of the council, to postpone to the next meeting the consideration of the proposed sections.

The PRESIDENT postponed the consideration of the sections, and also the further consideration of the Bill.

COURT OF WARDS.

MR. MONEY postponed the motion which stood in the list of business for the further consideration of the report of the select committee on the Bill to consolidate and amend the law relating to the court of wards in the provinces under the control of the Lieutenant-Governor of Bengal.

The council was adjourned to Saturday, the 12th instant.

Wednesday, the 12th February 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*.

T. H. COWIE, ESQ., *Advocate-General*.
THE HON'BLE ASHLEY EDEN,
A. MONEY, ESQ., C.B.,
A. R. THOMPSON, ESQ.,
V. H. SCHALCH, ESQ.,
H. H. SUTHERLAND, ESQ.,
RAJAH SATYANUND GHOSAL,
BABOO ISSUR CHUNDER GHOSAL,
BABOO CHUNDER MOHUN CHATTERJEE,
T. M. ROBINSON, ESQ.,
F. F. WYMAN, ESQ.,
AND
BABOO JOTEENDRO MOHUN TAGORE.

CALCUTTA WATER-RATE.

MR. SCHALCH moved that the report of the select committee on the Bill to empower the Justices of the Peace for the town of Calcutta to levy a water-rate on the town be further considered, in order to the settlement of the clauses of the Bill. He would take advantage of that opportunity to state that there was a mistake in the notice-paper, in which it was stated that an application would be made to the President to suspend the rules for the conduct of business to enable him (Mr. Schalch) to move that the Bill be passed. That was a mistake: it was distinctly understood at the last meeting that the Bill should not come on for passing till that day fortnight.

The motion was agreed to.

MR. WYMAN said that he would now submit the amendments to which he had referred at the last meeting. He had heard much discussion outside, amongst various classes of society, regarding the proposed clauses. The general feeling seemed to be that the clauses were wholesome, though there were, of course, differences of opinion as to the details. He had heard it objected that the rate of interest of 12 per cent. per annum, proposed to be allowed to the landlord on the outlay incurred by him on account of house-service, was too high; and that the minimum of Rs. 300 annual rent fixed was too low, there being many native houses of considerable size with a lower rental, because native houses were in proportion much cheaper than those in which Europeans resided, and that such houses would at least require more than one tap. It had also been thought very unfair to provide that three taps must be supplied in each floor. One hon'ble member had suggested a proviso to the first clause of the amendment, which he (Mr. Wyman) would read:—

"Provided that no such tenant shall be entitled to give such notice unless the term of his lease shall extend to such a period as that by the above calculation the proprietor will be able to recover half the cost of the work."

It was argued that a tenant might have only six months of his lease to run, and it would be very unjust to compel the owner to expend Rs. 700 in the house-service, with the

chance of getting the next tenant to pay 12 per cent. interest. He (Mr. Wyman) mentioned these matters now without expressing any opinion, because he desired to give fair play to every one concerned. Another objection had been made as to the last clause of the amendments, that it was very unfair to leave the landlord to recover the whole of the amount due from the tenant. With regard to this, however, he believed there was a compensatory clause.

With these general remarks, he would move the introduction, after section 14 of the Bill, of the following new section :—

14A. "It shall be lawful for the tenant holding direct from the owner of any house or land, by notice in writing signed by him, to require the owner of such house or land to perform all such necessary works as may be required for bringing into such house or land a proper and sufficient supply of water for domestic purposes. Every such notice shall contain an undertaking on the part of such tenant to pay 12 per cent. per annum during the residue of his lease, calculated from the date of the completion of the works."

Baboo Issur Chunder Ghosal moved the addition to the section of the following proviso :—

"Provided that no such tenant shall be entitled to give such notice unless the term of his lease shall extend to such a period as that by the above calculation the proprietor will be able to recover half the cost of the work."

His reason for moving this proviso was, that in the case of a house the lease of which would expire at the end of a year, at the rate of interest calculated in the clause, the proprietor would get only Rs. 36 for a work which would cost him Rs. 300 according to a calculation shown in yesterday's municipal meeting in the Town Hall. Therefore, in such case, he (Baboo Issur Chunder Ghosal) thought the owner got almost nothing as compensation. If, however, you reversed the law, and provided that the tenant should pay for the entire cost of introducing water to a house, it would be just as unfair on the other side. He therefore proposed that the expense should be divided between the owner and occupier as was at first suggested; and he had accordingly drawn up this proviso for the consideration of the council.

The Advocate-General said that he had an amendment to propose, which would, perhaps, be more conveniently taken up before the amendment just read out. It appeared to him that instead of either the original motion, that the occupier should simply pay interest at the rate of 12 per cent. per annum during the residue of his lease, or instead of the proposed amendment that such portion of the lease should remain unexpired as would ensure re-payment of half the outlay, he thought the fairer course would be to introduce a new provision, that the tenant should pay one-half of the cost of the works. It was for him to calculate whether the convenience was such as to be worth the outlay. As regards the section as it stood, a tenant whose lease had five years to run, would, at the rate of 12 per cent. interest, be paying 60 per cent. of the cost, which was, in fact, re-payment by instalments without interest. Why should the owner be obliged to lay out the full amount in the first instance, and be kept out of interest. He (the Advocate-General) apprehended that the fairer course would be that the occupier should pay one-half of the cost if he thought it worth his while to have water introduced in the house; but he should be made liable to pay the one-half on the completion of the works. Suppose the lease of an occupier had only one year to run, and the necessary works cost Rs. 300. As the clause stood, he would have the benefit of the works supplied by the owner for the payment, during the term of his lease, of interest at the rate of 12 per cent., or Rs. 36, and the difference between that and Rs. 300 would fall on the owner. The owner would have to incur the expense on the probability of getting the next tenant to pay the same interest. Probably it would increase the letting value of the house if there was a due supply of water, as there would be a saving in the payment of *bhisties*; but the landlord ran this risk, that from other causes there might be a general reduction of rent, and he might be in the position of never being able to recoup himself. Under these circumstances, the most equitable way of arranging the matter would be to enact, in the way he

(the Advocate-General) proposed, that the tenant should undertake to pay half the cost of introducing water, on the completion of the works; if the amount was not paid, interest would run at the Court rate, 6 per cent.

The amendment he proposed ran as follows:—

The omission of all the words after the words "domestic purposes" in line 8 and the substitution of the following:—

"Every such notice shall contain an agreement on the part of such tenant to pay to the owner half of the cost of the works upon the completion of the same."

He had substituted the word "agreement" for "undertaking," as the Stamp Act used the former term; and the stamp required would be an uniform one of eight annas.

Baboo Issur Chunder Ghosal said that he thought the amendment moved by the learned Advocate-General was certainly a better one than the amendment he had proposed. He would himself have provided that half of the cost be borne by the tenant, and be paid by him at once; but he was afraid that in doing so he would, in the opinion of hon'ble members, be asking too much. He thought it was a fair proposition, and would therefore, with the permission of the President, withdraw his amendment in favour of that moved by the learned Advocate-General.

Mr. Robinson said that it occurred to him that the amendment of the learned Advocate-General would lead to this difficulty: it would rather tend to frustrate the whole object of the clauses which the council were now considering. As he took it, it was the object of the water-supply works that pure and wholesome water should be supplied to houses; and he thought that the Bill under discussion should be calculated to make it the interest of every body to take the water. Whereas, under the amendment proposed by the Advocate-General, a tenant with a short term of lease would most certainly not apply to the landlord to introduce water. In the European portion of the town, houses were rarely taken for more than two or three years, and very few of these houses would have water laid on. It would not be worth the while of tenants to pay half the cost of introducing water.

Mr. Wyman said, referring to the remarks of the learned Advocate-General, he would mention that though much of what the Advocate-General had said was fair and reasonable; still, after consultation with several hon'ble members, he (Mr. Wyman) had come to the conclusion not to alter his opinion; and that it would not be be fair to make the tenant pay one-half of the cost of introducing water into a house. If the matter was put on that principle, the introduction of the water-supply in houses would be a very slow process indeed, because tenants with short terms to run would not have water laid on. The great object was the present and immediate supply of water in houses, without which householders would be unable to derive any advantage for the tax which they paid. Feeling convinced that the owner would be able to recover his outlay by compelling subsequent tenants to pay interest at twelve per cent., or, failing that, by an enhancement of rent, he (Mr. Wyman) thought the clause was better as it stood; and he would therefore oppose the amendment.

The Advocate-General said, that with reference to what had fallen from the hon'ble member who spoke last, he did not think it was the direct or relevant way to bring into consideration the general question of the desirableness of the introduction of the supply of water for domestic purposes. There might be sanitary considerations why that should be done; but any principle of that kind ought to be carried out by a compulsory enactment. The present section did not contemplate anything of that kind. In one sense the provision was compulsory, if the tenant chose to make it so: still it was left to the tenant; but inasmuch as any consideration of that kind seemed rather foreign to the present Bill—and he for one was inclined to limit the Bill to the raising of a sufficient fund for paying the interest on the advance made by the Government—he thought the section should be considered with no direct reference to broader questions of that kind. He thought that the

provision he proposed, of the tenant paying half the cost on the completion of the works, would be the most fair and equitable.

THE HON'BLE ASHLEY EDEN said that he was unable to support the learned Advocate-General's amendment. As he understood it, the principle which the council had determined to go upon was this, that the cost of laying on water was a permanent work for the improvement of the house which it was desirable to treat, as far as possible, as though it were a portion of the first cost of building. The landlord would recover the usual interest on his outlay by an increased rent; if the incoming tenant did not choose to pay the rent which the landlord wanted, he simply would not get his house, and so far as future tenants were concerned the matter was simple enough; but then came the case of current leases, and what he believed to be the wish of the council, and it seemed a very proper arrangement, was to put the landlord in such a position that he might recover the same interest on his outlay from the holder of a current lease as from his prospective tenant. If he received 12 per cent. from his outlay during a lease that still had some little time to run, that was all that they need look to: the future tenants' payments, for the benefit of having water laid on, would be a matter of agreement on settling the rent he was to pay. The Advocate-General's amendment, as it seemed to him (Mr. Eden), would have the effect of postponing the laying on of water in all houses in which the lease had less than three years to run.

MR. MONEY said that he agreed with the hon'ble member who spoke last. The expense which a landlord incurred in the introduction of water-pipes to his house would be repaid to him in one way or another by the existing and subsequent tenants. If the cost would be recouped to the landlord by the tenant, he (Mr. Money) saw no reason to depart from the section as it stood: if the cost was not to be recouped from the rent, then the natural deduction would be to make the tenant pay the *whole*, and not only half of the cost. He would therefore oppose the amendment.

The council then divided on the Advocate-General's amendment:—

AYES—5.	NOES—8.
Baboo Joteendro Mohun Tagore	Mr. Wyman.
„ Chunder Mohun Chatterjee.	„ Robinson.
„ Issur Chunder Ghosal	„ Sutherland.
Ralph Salvamund Ghosal	„ Schalch.
The Advocate-General.	„ Thompson.
	„ Money.
	The Hon'ble Ashley Eden.
	The President.

The amendment was therefore negatived.

THE PRESIDENT said that it was still open to the hon'ble member who had withdrawn his amendment to propose it again. It appeared to him (the President), however, that the amendment, if adopted, would make the section inoperative, because under it one-half of the cost of introducing water-pipes into a house would not be recovered under 4½ years, and no occupier would enter into an agreement to re-imburse the owner one-half of the outlay unless his lease extended to a term of five years.

BABOO ISSUR CHUNDER GHOSAL said he thought that the next succeeding tenant should be required to continue to pay interest in the same manner as the first tenant: in one way or another the proprietor should be re-imbursed substantially on his outlay. He would therefore modify his amendment, and move the addition to the section of the following proviso:—

"Provided that no such notice shall be given by any tenant, unless at the time of giving such notice he may hold such house or land for a term of which not less than two years are still unexpired."

MR. SCHALCH said he was of opinion that the term should be reduced to one year. He knew one or two instances in which gas had been put on at the cost of the tenant, and the fact of gas being laid on had invariably been given by the owner as a reason for raising the rent

on the expiry of the lease. Leases here barely run beyond a term of three years; so that even if a tenant had two-thirds of his lease to run, he would have to pay half the cost of introducing water: the effect of the amendment would be to retard the operation of these provisions.

BABOO ISSUR CHUNDER GHOSAL said, he thought that by reducing the term from four and a half years to two, he had conceded to the tenant as much as could reasonably be expected. He must explain that under the clause the tenant would really be paying interest for only a year and ten months, as two months were allowed for the completion of the works, and the tenant was required to pay interest only from the date of the completion of the works. The difference between the amendment and the suggestion of the hon'ble member on his right (Mr. Schalch) was only ten months.

MR. MONEY said it appeared to him that the cost of laying on water would be recouped to the owner in the case of the existing tenant by the interest on outlay; in the case of the succeeding tenant, by an enhancement of rent. If that were the fact, there was no reason for limiting the period of lease within which an occupier might serve notice on the owner. He (Mr. Money) submitted, that whether the lease of the present tenant were for a short or long term, did not matter a straw, if the landlord afterwards recouped himself by an enhancement of rent.

MR. SUTHERLAND said that he concurred with the hon'ble member who spoke last. He could see no advantage whatever in introducing a limit of time. The disadvantage would be that all tenants whose lease had a short term to run would be without water, while only tenants who had a long lease could have water laid on at once.

THE PRESIDENT said that he agreed with the hon'ble member on the left (Mr. Money) as to the principle on which this matter should be based. It struck him that there would be some practical inconvenience if we passed a law empowering every occupier of a house to give notice to his landlord to introduce these works. A section lower down provided that if an owner should not, within the space of two months, cause the necessary works to be completed the occupier might do it himself, and deduct the cost from the rent paid by him. He (the President) was not sure that it would not be hard on the owner to be compelled to complete these works in large houses within the short space of two months. The amendment proposed would have the advantage of distributing the work of connecting houses with the water-main over a longer period of time, on that ground he was disposed to concede the point involved in the present amendment.

The council then divided on Baboo Issur Chunder Ghosal's amendment:—

AYES—6	NOES—7.
Baboo Jotendro Mohun Tagore.	Mr. Wyman
„ Chunder Mohun Chatterjea	„ Robinson
„ Issur Chunder Ghosal	„ Sutherland.
Rajah Sutyanund Ghosal	„ Schalch
The Advocate-General.	„ Thomason
The President	„ Money
	The Hon'ble Ashley Eden.

The motion was therefore negatived.

MR. SCHALCH said that one case was not provided for in the section as it now stood—viz, the case of houses situated in bye-lanes. There was a proviso in the next section excluding the operation of the section as to houses situate in streets, lanes, bye-lanes, and thoroughfares where water-pipes had not been laid by the Justices. It would be hard, in cases of that kind, that the occupier should have no right at all to have water introduced at the landlord's expense in his house. He (Mr. Schalch) thought, that if any occupier of a house in such places wanted a supply of water, he must undertake to pay the additional cost of the length of supply-pipe from the nearest main to his premises: having done that,

the supply-works would be put on by the landlord on the same terms as governed other cases. He would therefore move the addition to the section of the following proviso:—

"Provided that in case the house or land held by such tenant shall not abut upon some street in which there is a supply main, such tenant shall, in the said agreement, undertake to pay the cost of connecting his premises with the nearest supply main."

Mr. Wyman said he was afraid that the proviso now proposed would have greatly the effect of delaying the introduction of the water-supply to houses. If the principle was conceded that the laying on of water is an improvement, and if the landlord received a fair equivalent in the shape of interest, he (Mr Wyman) did not see why the landlord should not bear this expense as well as the other. It would also tend to create confusion if the tenant were required to bear one part of the expense and the landlord another. He would therefore oppose the motion.

Mr. Robinson said that he thought there was some misapprehension as to the necessity of any such addition at all, because it would then be necessary to determine what was the work of the Justices, and what was the work of the owner and occupier respectively. The third section of the Bill provided a fund for all necessary amendments and reparations, as well as extensions of the water-supply works: surely that must mean, that if the main was required to be carried into any street, it should be carried at the expense of the Justices; as owners and occupiers could only be expected to introduce water into their premises from the mains.

Mr. Schalch said that in laying down the water, every endeavour had been made to introduce it even in the smallest streets, and an additional expense of two lakhs of rupees had been incurred on this account. Now, by the law as it stood, water was only required to be supplied in the main and chief streets of the town: but it had been given to very many more. Still there were numbers of small bye-lanes in which it was difficult to lay down pipes. He thought, as the profits of the water-supply accrued, the Justices would be able gradually to introduce water into the smaller streets; but in the meantime the tenant should be able to obtain at once the benefits of the supply if he paid for the service-pipes required for connecting his premises with the nearest main. If it was not of sufficient importance to him to do this, he would not serve the notice on the owner. The cost to the tenant would be about 12 annas per running foot. On the other hand, if the Justices were to lay down mains in all the small lanes at once, it would be at a very considerable cost, which would have to be added to the capital, and the rate-payers would have to pay an additional sum as interest on the additional capital thus expended, and we could not retain the maximum of 5 per cent: it would certainly at least cost a lakh more, whereas, on the other hand, the mains could be gradually extended out of the margin left from the proceeds of the rate. There was no great hardship in laying down the rule that the whole of the cost of bringing the pipe from a street on which there might be a main to that in which the house was situated, should be borne by the occupier, leaving the landlord to bear the expense of the remaining pipes.

Mr. Robinson said that he thought it was excessively desirable that there should be no sort of uncertainty in the matter. The Justices were by law required to carry the water to the principal streets and thoroughfares: he thought that an addition should be made specifying the distance from which an occupier would be bound to supply pipes for bringing water. If no distance were specified, he might be required to bring it from a mile. It was the uncertainty that he (Mr. Robinson) objected to: an addition might be made to the section to the effect that the occupier should not be required to carry the pipes through a street beyond a certain distance.

The Advocate-General said that if the early sections of the Bill were looked at, he thought it was clear what the state of things would be. The preamble and the third section speak of the water-supply works of Calcutta, which included the carrying of supply-mains, a

far as was practicable, to within 150 yards of a house: then if the funds of the Justices, or the necessities of the time, should hereafter render it desirable that the supply-mains should be further extended, it could be done. If an occupier did not like to wait for that, and required a more immediate supply for his house, he (the Advocate-General) thought it was fair he should pay for the acceleration in the way proposed. He did not see any indefiniteness in the provision.

MR. SCHALCH's amendment was then carried, and the section as amended was agreed to.

MR. WYMAN moved the introduction of the following section after the above:—

"The supply to a house shall be deemed sufficient for domestic purposes if it provides the necessary works for and with a tap in each bath-room, not exceeding three in each floor of such house; one other such tap in the cook-room of or attached to such house, and one other such tap in the premises, or in or near the stables of or attached to such house. Provided that if the annual rent of such house shall be less than Rs. 300 it shall be sufficient to provide the necessary works for or with one tap only within the said premises: and provided also that this section shall not apply to huts, shops, godowns, or other places of business or trade, and also to houses or buildings situate in streets, lanes, bye-lanes, or thoroughfares where water-pipes have not been laid by the Justices. Provided further that the occupier of such house or building shall keep in repair at his own expense the works laid on by the owner for such supply of water."

BABOO ISSUR CHUNDER GHOSAL moved by way of amendment the substitution of "two" for "three" in line 2. He thought that two taps on each floor were as much as could be reasonably required.

MR. SCHALCH said that he would support the amendment: he believed that there were very few houses in which there were more than two bath-rooms on each floor; and if any occupier required the use of more than two taps on one floor, he could at very little cost provide another tap.

After some conversation the amendment was agreed to.

BABOO ISSER CHUNDER GHOSAL then moved the omission of the words "one other tap in the cook-room of or attached to such house, and one other tap in the premises or in or near the stables of or attached to such house;" and the substitution for them of the words "and one other such tap in the premises." He thought that one tap in a centrical position in the premises would be sufficient.

MR. WYMAN said that any supply which fell short of enabling an occupier to do away with the *bhistee* would fail in attaining the desired object. He thought that there could be little question that a tap was absolutely necessary in the cook-room as well as in the stables, and therefore two taps in the premises were as few as any house could do with.

The amendment was then put and negatived.

BABOO ISSER CHUNDER GHOSAL further moved that "Rs. 600" be substituted for "Rs. 300," as the minimum annual rental of houses in which more than one tap should be supplied.

After some conversation this amendment was also negatived.

On the motion of MR. SCHALCH several verbal amendments were then made in the section.

MR. MONEY said that the section provided that the works, when supplied, should be kept in repair at the expense of the occupier; but he (Mr. Money) thought that these works when once laid on by the owner really had become a portion of the house, and that therefore any repairs required to be done to them should properly fall on the owner. In some cases the necessary repairs could not be effected without breaking up a portion of the wall, and thereby interfering with the property of the owner. There was, besides, another objection. If the occupier was at his own expense to repair these works, the owner would have a claim against him for any damage done to the house or premises, which might be quite irrespective of any fault on the part of the occupier. He would therefore move as an amendment the substitution of the following proviso for the proviso at the end of the section:—

"Provided further that the owner of such house or building shall keep in repair at his own expense the works laid on by him."

BABOO ISSUR CHUNDER GHOSAL said that the hon'ble member had not explained how, under his amendment the owner could protect himself against breakage by the improper use of the water-works. If there was any disagreement between the owner and the occupier, the occupier would have nothing else to do than to smash the pipes every day and compel the owner to incur unnecessary expense. He (Baboo Issur Chunder Ghosal) must congratulate the hon'ble member on his having put this final stroke on the Bill.

THE ADVOCATE-GENERAL said that the hon'ble member who had just spoken forgot that if an occupier indulged his feelings in the way the hon'ble member described, he would be liable every time he did so to a penalty of Rs. 100. But passing that over, it was quite clear that the section as it stood would not answer. It referred not only to the occupier on whose application pipes had been laid, but might mean the occupier for the time being. There certainly would be great inconvenience in providing that the occupier should keep the works in repair; works of this kind would in their nature be fixtures, and according to the practice in Calcutta, the general repairs of a house, which would include the restoration of all fixtures in a state of tenantable repair, were borne by the owner at the end of every three years. The better course, therefore, would be simply to omit the proviso, leaving the question of liability for repairs to be determined according to special contract, or leaving the repairs of these works for the supply of water to the general law or custom as regards any other repairs; but inasmuch as it would throw on the owner in the case of business premises the expense of repairing works that could not come under the term general repairs, however fair it would be as regards any occupier other than the one on whose application the works were constructed, it would be fair that during *his* term of holding he should be liable to pay the expense of the repairs. He (the Advocate-General) would therefore move the omission of the last proviso in the section, and the substitution of the following:—

"Any occupier upon whose requirement as aforesaid any works for the supply of water shall have been introduced into any house or land, shall during his term be bound to bear the expense of keeping such works in substantial repairs."

Therefore, after the person on whose application under the previous section water had been introduced, had ceased to be the occupier, the question of repairs would be left to special contract, or to be dealt with under the general law.

MR. WYMAN said that the objections of the hon'ble member on his left (Mr. Money) could be easily provided for, by arranging that the repairs should be executed by the owner, but the expense paid by the tenant. There was another reason why the provision was introduced. It was felt that if the occupier was responsible for repairs he would be more likely to see the pipes well used, and the owner would not have the trouble of sending in bills to the occupier which might be disputed.

MR. MONEY'S amendment was then put and negatived.

THE ADVOCATE-GENERAL'S amendment was carried, and the section as amended was agreed to.

MR. WYMAN moved the introduction of the following section after the above:—

"In case any owner shall not within the space of two months from the service of such notice cause such necessary works as aforesaid to be completed, it shall be lawful for the tenant who shall have given such notice to cause such necessary works to be completed, and to deduct from the rent payable by him the cost of such works by equal instalments extending over a period of not less than six months."

The section was agreed to with the substitution of "six months" for "two months" in the first line.

MR. WYMAN moved the introduction of the following section after the above:—

"No works for introducing a supply of water into any house or land shall be commenced by the owner without sending an estimate of the cost thereof to the tenant, nor by the tenant without sending such estimate to the owner."

This section was also agreed to with slight amendments.

MR. WYMAN then moved the introduction of the following:—

"In case there shall be any difference between the owner and the tenant respecting the cost or the efficiency of the works, it shall be lawful for such owner or such tenant to refer such difference to the Justices, and the written award of the engineer of the Justices, or of any officer authorized by the Justices that behalf, shall be binding on the owner and the tenant."

The section was agreed to with a verbal amendment.

MR. WYMAN then moved the introduction of the following section:—

"There shall be payable to the Justices in respect of every such reference the sum of Rs. 2 for every hundred rupees of the monthly rent of the house in respect of the water-supply to which the difference may have arisen: provided that such fee shall in no case exceed Rs. 10; and such fee shall be paid by the person making such reference. All such works as aforesaid shall be constructed subject to the inspection and to the satisfaction of the engineer of the Justices, or of some other officer appointed by the Justices in that behalf; and for the purposes of such inspection it shall be lawful for the said engineer or other officer to enter the house or land at all reasonable times or until the completion of such works."

This section was agreed to with a verbal amendment and the omission of the second clause.

MR. WYMAN then moved the introduction of the following section:—

"It shall be lawful for any owner who shall have completed such works to recover from the person who shall have given such notice any sum which such person had undertaken to pay, as if the same were rent payable for the house in respect to which such notice shall have been given."

The motion was agreed to.

THE ADVOCATE-GENERAL moved that the proviso at the end of Section 14B., which had been introduced on his motion be expunged, and inserted as a new section after Section XIVF, and to stand as follows:—

"Any occupier upon or after whose requirement as aforesaid any works for the supply of water shall have been introduced into any house or land, shall during his term be bound to bear the expense of keeping such works in substantial repairs."

The motion was agreed to.

In Section 15 the Advocate-General moved the inclusion of Act VI. of 1866 (B. C.) amongst the Acts with which the Bill should be incorporated.

The motion was agreed to.

Section 16 was agreed to.

Section 17 was on the motion of the Advocate-General omitted as being unnecessary.

On the motion of Mr. Schalch, a verbal amendment was made in Section 15.

Section 1, and the schedule, preamble, and title were agreed to.

The council was adjourned to Saturday, the 19th instant.

Saturday, the 19th February 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*.

T. H. COWIE, ESQ., *Advocate-General*,
THE HON'BLE ASHLEY EDEN,
A. MONEY, ESQ., C.B.,
A. R. THOMPSON, ESQ.,
V. H. SCHALCH, ESQ.,
H. H. SUTHERLAND, ESQ.,
RAJAH SATYANUND GHOSAL,
BABOO CHUNDER MOHUN CHATTERJEE,
T. M. ROBINSON, ESQ.,
F. F. WYMAN, ESQ.,
AND
BABOO JOTEENDRO MOHUN TAGORE.

CALCUTTA WATER-RATE.

Before bringing forward the motion that the Bill to empower the Justices of the Peace for the town of Calcutta to levy a water-rate be passed, Mr. Schalch moved that the Bill be reconsidered for the purpose of making some proposed verbal amendments therein.

The motion having been agreed to, verbal amendments were made in Sections 8 and 9, and, on the motion of Mr. Schalch, the Bill was then passed.

COURT OF WARDS.

Mr. Money moved that the report of the select committee on the Bill to consolidate and amend the law relating to the court of wards within the provinces under the control of the Lieutenant-Governor of Bengal be further considered, in order to the settlement of the clauses of the Bill.

The motion was agreed to.

Baboo Joteendro Mohun Tagore moved the following amendment in the postponed Section 26, the grounds of which he said he had stated at a previous meeting:—

"Provided always that when a guardian shall have been appointed by the will of the person to whose estate the ward may have succeeded, such person shall be appointed guardian by the court, unless the board of revenue, after a report received from the court of wards, and after calling on the testamentary guardian to show cause why the testamentary provision should not be set aside, consider him disqualified or unfit."

The Advocate-General said that he approved the principle of the amendment moved, but it occurred to him that there might with advantage be introduced certain alterations in the wording, rendered necessary inasmuch as the question of guardianship had reference not to the estate but to the person of the minor. He would therefore move that the proviso stand thus:—

"Provided always that when a guardian of any minor ward shall have been appointed by will, such person shall be appointed guardian by the court, unless the board of revenue, after a report received from the court, and after calling on the testamentary guardian to show cause, shall consider him disqualified or unfit."

The motion was carried, and the Section as amended agreed to.

The Advocate-General said that the amendments he had on the paper had for their object the alteration of the Bill as it stood, so as to avoid a difficulty which appeared to be becoming more and more a practical difficulty, that was to say the limitation imposed on the legislative power of this council as regards the passing of enactments affecting directly or indirectly the jurisdiction of the high courts; the Act of Parliament establishing the high courts, and the consequent charters, being passed subsequently to the passing of the Indian Councils' Act. The amendments which he was about to propose were not, even to his own mind, entirely satisfactory, because it was not satisfactory that the power of the court of wards should be limited as regards the estates of infants personally subject to the jurisdiction of the high court by reason of their being resident in Calcutta, or by reason of their being European British subjects residing out of Calcutta. As to the state of the law, that was to say as regards the Acts on the subject of the jurisdiction of the high court with regard to lunatics and idiots, there was no doubt; and indeed as regards lunatics subject to the jurisdiction of the high courts, the sections he proposed to introduce were substantially a repetition of the existing law, under which, even although the high court should, under a commission issued, pronounce a person subject to its jurisdiction to be a lunatic, still the court of wards might assume the management of such portions of the lunatic's estate as were situate without the local limits of the high court's jurisdiction.

But as regards infants, the subject matter as it stood, and with reference to a Bill like the present introduced in the council of the Lieutenant-Governor of Bengal, was somewhat different. Under Act XL of 1858, which had reference to the appointment of guardians of infants, the matter was easily disposed of by a clause at the end of that Act, which enacted that nothing contained in the Act should be held to affect the powers of the supreme court over the person or property of any minor subject to its jurisdiction. But this council could not interfere with the jurisdiction of the high court, and therefore instead of a clause of that nature, we must substantively provide for the matter. The only mode appeared to be to exclude from the general operation of the Bill persons who were subject to the jurisdiction, in matters of infancy or lunacy, of the high court, and as regards lunatics to follow the provisions contained in Act XXXIV of 1858 with regard to the supreme court's jurisdiction in lunacy, and also to provide, subject to the orders of the high court, that the management of the

estates of infants might be taken charge of by the court under this Act. He (the Advocate-General) would therefore first propose to insert in Section 2, which was the general governing section of the Act, showing who were the persons to become subject to the jurisdiction of the court of wards, after "proprietors of estates" in line 1, the words "(other than proprietors who are subject to the jurisdiction as respects infants and lunatics of a high court,)" and in section 21, which had reference to inquiries in the case of minors, to insert after "proprietor" in line 1, the words "who is not subject to the jurisdiction as respects infants of a high court of judicature;" and then in Section 23, which related to persons deemed disqualified on the ground of idiotcy or lunacy, to insert after "proprietor" in line 1, the words "who is not subject to the jurisdiction in lunacy of any or either of the high courts of judicature."

He next proposed to introduce two new sections after Section 23, first one to the effect that if a person had been found by the high court under the Act of 1858 to be of unsound mind, the court should take charge of the estate and lands of such person, and that the surplus income, after the payment of the general revenue and the expenses of management, should be disposed of from time to time in such manner as the said high court shall direct. That was neither more nor less than a repetition of the existing law with regard to lunatics found so under a commission issued from the high court. It was merely a repetition of what was contained in Act XXXIV of 1858, so that the whole subject might be contained in one and the same enactment. That section had reference to persons found lunatics by the high court.

Then he proposed to introduce a section applicable to a case which might not unfrequently occur where a lunatic proprietor was not within the provinces subject to the control of the Lieutenant-Governor of Bengal, and had not been found lunatic by any high court. He proposed to provide for the case of such persons resident beyond the provinces subject to the Lieutenant-Governor of Bengal, which came under the provisions of Act XXXV of 1858, relating to the civil courts; the jurisdiction under Act XXXIV of 1858, being confined to the high court: in the proposed section, therefore, he only substituted "civil court" for "high court" in the previous section.

The same alteration which was proposed to be made in Sections 2, 21, and 23 would require to be made in Section 24, and in line 4 of the same section there would be a slight alteration rendered necessary in consequence of the amendment proposed to be made in the beginning of the section with reference to the form of procedure in enquiries instituted under the section. He proposed to insert "other than unsoundness of mind" after "on the ground of some natural or acquired defect or infirmity." And then, after that, he proposed to introduce a section relating to the case of a person resident within the local limits of the jurisdiction of the high court, or beyond the provinces under the control of the Lieutenant-Governor of Bengal, who was disqualified by reason of some defect other than unsoundness of mind. The necessity for that was that no defect other than that of unsoundness of mind would be recognized by the high court as a subject of enquiry: any such consideration as blindness or anything of that kind would not form a ground on which the high court would exercise any jurisdiction to appoint a manager of the estate, at least without a regular suit, which was of course another matter, and with which this council did not in any way interfere by the Bill.

He had endeavored to state generally the scope of the sections he had drawn. But the subject was one of a good deal of difficulty, and he was not at all satisfied that in this respect the Bill was all that it should be; but having regard to the legal bearings of the subject, and the limitation of the power of the council as regards the jurisdiction of the high court, there appeared to be no other way of settling the question.

On the motion of the Advocate-General the following amendments were then made:—

In Section II, line 1, after "estate," the words "(other than proprietors who are subject to the jurisdiction as respects infants and lunatics of a high court)," were inserted.

In Section XXI, line 1, after "proprietor," the words "who is not subject to the jurisdiction as respects infants of a high court of judicature" were inserted.

In Section XXIII, line 1, after "proprietor," the words "who is not subject to the jurisdiction in lunacy of any or either of the high courts of judicature established by royal charter" were inserted.

The following sections were introduced after Section XXIII :—

XXIIIA. "If a proprietor shall under the provisions of Act XXXIV of 1858 of the late legislative council of India have been found by any high court of judicature to be of unsound mind and incapable of managing his affairs, the court may (subject to the powers of the high court under the said Act XXXIV of 1858) take charge of the estate and lands of such proprietor situate beyond the local limits aforesaid and deal with the same subject to the provisions of this Act. Provided that in such case no further proceedings shall be taken under the last preceding section, nor shall it be competent to the court to appoint a guardian of the person of the said proprietor. Provided also that the surplus income of the property so taken charge of by the court, after providing for the discharge of the government revenue and the expenses of management, shall be disposed of from time to time in such manner as the said high court shall direct, and not otherwise."

XXIIIB. "When a proprietor resident beyond the provinces subject to the government of the Lieutenant-Governor of Bengal shall by a civil court of competent jurisdiction, under the provisions of Act XXXV of 1858 of the late legislative council of India, have been declared to be of unsound mind and incapable of managing his own affairs, the court may take charge of the estate and lands of such proprietor situate within the said provinces and deal with the same subject to the provisions of this Act. Provided that in such case no further proceedings shall be taken under Section XXIII of this Act, nor shall it be competent to the court to appoint a guardian of the person of the said proprietor. Provided also that the surplus income of the property so taken charge of by the court, after providing for the discharge of the government revenue and the expenses of management, shall be disposed of from time to time in such manner as the said civil court shall direct, and not otherwise."

In Section XXIV, line 1, after "proprietor," the words "resident without the local limits of the jurisdiction of the high court" were inserted.

In line 4 of the same section, after "minority," the words "other than unsoundness of mind" were inserted.

The words "when any enquiry is instituted before a civil court under Section XXIII or Section XXIV of this Act" were prefixed to Section XXV.

The following section was introduced after Section XXIV :—

XXIVA. "If a proprietor resident within the local limits of the jurisdiction of the high court of judicature at Fort William in Bengal or resident beyond the provinces subject to the government of the Lieutenant-Governor of Bengal, shall be reported by a collector to be disqualified by reason of some natural or acquired defect or infirmity other than unsoundness of mind, the court within whose division the estate or lands of such proprietor are situate shall order the collector making such report to apply to the civil court of the 24-Pergunnahs or to such other civil court as the Lieutenant-Governor on application made to him by the collector in that behalf may determine. Such civil court shall thereupon enquire into, and determine the question as to the alleged disqualification, and the provisions of Sections IV, VII, and XXII of the said Act XXXV of 1858 shall apply to the said enquiry."

The postponed Section 30 was agreed to.

The postponed Section 36 was passed with slight amendments.

The postponed Section 49 provided that except the mother of a ward, no person who can succeed to the estate of a ward should be appointed guardian.

MR. MONEY said that the existing law contained in Section 21, Regulation X of 1793, barred the appointment of a person who was the legal heir or other person interested in outliving the ward. But the principle of that exclusion had now been thrown out by the council by the amendment made in Section 26 of the Bill. He would therefore move that after the words "provided, however, that this section shall not apply to the mother of a ward," be added "or to a testamentary guardian appointed under Section 26."

THE ADVOCATE-GENERAL said that with reference to this section in connection with Section 26, the addition proposed would not practically vary the policy of the law as contained in the existing regulations, because although if this addition was made there would not be an absolute disqualification of any person who would be the legal heir or otherwise interested in outliving the ward, still under Section 49 it would be competent for the Board of Revenue to take that matter into consideration when they were considering the question whether the testamentary guardian should be appointed.

MR. MONEY's motion was then carried, and the section as amended was agreed to.

The postponed Section 50 related to the mode of appointing guardians.

BABOO JOTEENDRO MOHUN TAGORE moved the insertion, after the word "ward" in line 6, of the following proviso :—

"Provided also that none but a person of the same religion, if hindoo or mahomedan, shall, except in the case of a testamentary guardian, be appointed guardian of a female ward; preference being given to female relatives if any such be eligible."

He said that it was very necessary that the female guardian should be permanently domiciled with a female ward, particularly if she happened to be of a tender age. Now it must be observed that nothing could be more repugnant to the feelings of a hindoo than that a person of a different religious persuasion should live with the family; and none could be more acceptable as an inmate of a house than a relative, however distantly she might be connected. Although he confessed he knew of no instance in which any but a hindoo had been appointed guardian of a hindoo female ward, still he thought it desirable that this principle should be recognized by the legislature.

The motion was carried, and the section as amended agreed to.

The postponed Sections 51, 53, and 54 were agreed to.

The postponed Section 55 was agreed to with a slight change in the wording of the proviso at the end of the section, made on the motion of MR. MONEY.

The postponed Sections 56 and 57 were agreed to.

The postponed Section 66 provided that no adoption by a ward without the consent of the Lieutenant-Governor should be deemed valid.

MR. MONEY said that in this section there had been no regular amendment proposed The question was raised as to whether or not the exclusion of the power of a ward to adopt between the ages of 16 and 18 was in accordance with the existing law. The section stood over for consideration as to how the law applied. The chief ruling on the subject was one of a full bench of the high court in the case of Madhusudan Manji *versus* Debigobinda Newgi, 1, Ben. L. R. F. B. 49, in which it was ruled, according to the law as it at present stood, that the minority of a hindoo in all cases extended to the age of 18. The question then would be whether a minor had under the law any power to adopt. On this point an opinion was given by the late Baboo Prosonno Coomar Tagore, that a hindoo minor was incompetent to adopt. The section of the Bill under consideration simply re-enacted the law as it stood since 1793; therefore he (Mr. Money) saw no reason to consider how far the question was affected by the hindoo law. The law as it at present stood was contained in Regulation X of 1793, Section 23, which was as follows :—

"No adoption by disqualified landholders is to be deemed valid without the previous consent of the court of wards, on application made to them through the collector."

BABOO JOTEENDRO MOHUN TAGORE said he would ask what necessity there was for retaining this section of the Bill if before the age of 18 no adoption can be valid.

THE ADVOCATE-GENERAL said that he would vote for retaining the section, because it would avoid the raising of a question which could not be considered absolutely settled in its most general shape; that was to say, the age of majority of a hindoo. He was not speaking as to the age of majority as regards the jurisdiction and superintendence of the court of wards, which had been fixed at the age of 18; but it would be a different question whether adoption by wards under the age of 18, but over the age of 16, as regards the jurisdiction of the court of wards, might or might not be valid. He thought, therefore, that it would be best to keep the section, because the question in its broader shape—whether a hindoo did for any purpose become of age at the age of 16—had not been conclusively determined.

MR. MONEY said that the section they were considering did not apply to minor wards only, but to *any* ward.

BABOO JOTEENDRO MOHUN TAGORE said that in that case an *onoomotee potro*, or power to adopt, should be included. A ward might suddenly be taken ill, and have no time to obtain

the sanction of the Lieutenant-Governor to adopt a successor; but he might leave a power to his widow to adopt, and therefore an *onoomotee potro* should also be made valid.

On the motion of the ADVOCATE-GENERAL a written or verbal power to adopt was included in the section, and the section as amended was then agreed to.

The postponed Section 69 related to the procedure to be adopted on the termination of wardship.

THE ADVOCATE-GENERAL said that this section stood over for discussion as to the case of an estate ceasing to belong to a disqualified proprietor by reason of his coming of age, and it was suggested that it would be more convenient and desirable that the order for the termination of the jurisdiction and superintendence of the court of wards should be given, so that the expiration of the time prescribed by the section should be conterminous with the conclusion of the majority. On consideration it did not seem to him (the Advocate-General) necessary to make any alteration in the section, because under the section the order might be made at any time.

The section was then agreed to.

Sections 70 and 71 were agreed to.

Section 72 authorized the court of wards, if within one year of the decease of a ward the succession to whose property was in dispute, no suit was instituted to determine the right to the property, to make over the property to any claimant thereof, or with the sanction of the Board of Revenue to sell the estate, and to hold the proceeds in trust for the person who may be entitled thereto.

BABOO JOTEENDRO MOHUN TAGORE moved an amendment to the effect that the sanction of the Board of Revenue should be obtained before the court of wards made over the estate to any claimant. He said that when it was proposed to give such a discretionary power to the court, it was but necessary that there should be some safeguard provided. Before making over the property to any claimant without any judicial decision, the sanction of the Board of Revenue should be obtained.

The motion was carried, and the section was agreed to after a verbal amendment made on the motion of the Advocate-General.

Sections 73 to 77 were agreed to.

In section 78 a clerical error was corrected, and the further consideration of the section and of the Bill was then postponed.

The council was adjourned to Saturday, the 26th instant.

THE council met in the council chamber on Saturday, the 26th February 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*.

T. H. COWIE, ESQ., *Advocate General*,
THE HON'BLE ASHLEY EDEN,
A. MONEY, ESQ., C.B.,
A. R. THOMPSON, ESQ.,
V. H. SCHALCH, ESQ.,
H. H. SUTHERLAND, ESQ.,
RAJAH SATYANUND GHOSAL,
BABOO CHUNDER MOHUN CHATTERJEE,
AND
BABOO JOTEENDRO MOHUN TAGORE.

VILLAGE CHOWKEEDARS.

MR. RIVERS THOMPSON moved that the Bill to provide for the appointment, dismissal, and maintenance of village chowkeedars be read in council. He said that in endeavoring on the last occasion when he addressed the council to explain the necessity for legislation upon this subject, he engaged, after leave was given for the introduction of the Bill, to explain to the council the principles upon which legislative action should proceed. For a right and perfect comprehension of this part of the subject it would, he thought, be of advantage to state in the

outset the attempts which have been made to pass a law for the reform of the village police in Bengal, and he would crave the indulgence of the council for a brief recapitulation of the proposals which have been made at different times with a view to legislation.

He stated on the last occasion that a Bill for the better regulation and management of the rural police in Bengal had been introduced into the legislative council in the year 1859. The Bill was introduced by Mr. Henry Ricketts, the member who represented the interests of the Bengal provinces in the council as then constituted, and whose knowledge of the country made him eminently fit to have charge of such a measure. In bringing forward his Bill he showed very clearly what subsequent investigation and experience had only more fully confirmed, that the whole system was one in much confusion and irregularity, which embraced almost every point connected with the appointment, maintenance, or organization of the police force. Thus in some places chowkeedars were appointed by the zemindar, some by the zemindar's gomastah, some by the headmen of the village, some by the villagers themselves. Again, in some places the remuneration of the chowkeedars was by land allotments, in others by salaries in cash, by allowances of grain, by presents of cloth; and while in a few cases the remuneration might be sufficient, in the greater part of the country the rates of pay prevailing were entirely inadequate for the support of the village policeman.

The enquiries at that time, and in previous years, had brought to light the fact that in all the Bengal districts there were in 1859 about 1,64,777 chowkeedars in 1,59,309 villages, and that the aggregate sum paid in different forms to this body of police was estimated at no less a sum than 59½ lakhs of rupees. Mr. Ricketts' Bill proceeded on the principle that the nomination of the village watchman should rest with those who had hitherto nominated them; that there should be no change in the nature of the remuneration which the chowkeedar had been in the habit of receiving, though endeavors should be made to arrive as far as possible at a system of money payments by salary; that punchayets should be formed wherever practicable for the assessment and collection of the cess necessary for the payment of the village watchmen; and for the appointment and removal of the chowkeedar, subject to the magistrate's control. The Bill also provided that it should be competent to the magistrate to dispense in places with the services of the chowkeedar, and to utilize the cess of the village to which such chowkeedar belonged to increase the pay of chowkeedars in other places. It seemed to be the opinion of the hon'ble member that a great deal of the large sum that was collected throughout the country was very uselessly thrown away to no purpose, and that with two-thirds of the sum thus collected very much more practical good might be effected if power was given under his Bill to appropriate the monies for the furtherance of the objects of an efficient rural police in such places as might be deemed proper, irrespective of the places and towns from which the cess was realized.

It would be unnecessary to discuss now the merits or demerits of such a principle of action beyond stating that it forms no part of the present measure. On the contrary, the opposite principle has been distinctly recognised, that whereas it is just and expedient that the people at large should pay for their own protection, the fund realized should be directly limited in its application to the place where it is raised. However, as regards the Bill of 1859, he (Mr. Thompson) might state that beyond the enunciation of the principles on which he intended to proceed, Mr. Ricketts went no further. The Bill after being read in council appears to have been dropped, under circumstances which had been given in the statement of objects and reasons attached to the present Bill.

He (Mr. Thompson) had not been able to trace that anything further was done in the matter till the year 1863, when under the orders of His Honor's predecessor a report was called for on the subject of the re-organization of the village police in Bengal from Mr. C. P. Hobhouse, then civil and sessions judge of the Midnapore district, now Sir Charles Hobhouse, one of the learned puisne judges of the high court of judicature of Bengal. In October of that year, in obedience to the above orders, Mr. Hobhouse submitted a careful report on the subject with the draft of a Bill for the reform of the village police system. His opinion, fully elaborated in the report upon which Mr. Hobhouse prepared his measure, was that by both law

and usage a clear obligation rested upon zemindars and village communities to maintain in their estates and villages a village police; that it should be declared by law that in supersession of all previous practice the payment of such village police in future should be in money; that the funds for the payment were to be supplied by landed proprietors or heads of village communities; and that all further management and employment of this force,—its appointment, organization, dismissal, and payment—were to be entirely independent of the zemindars or village communities, and should be vested solely in the district superintendent of police, subject to the general control of the district magistrate.

The publication of this report, and of the draft Bill founded upon it, elicited from many quarters opinions very adverse to its main features. Among others he might mention that the hon'ble member opposite, as commissioner of the Bhaugulpore division, and the hon'ble member to the right, as secretary to the British Indian Association, were prominent among those who resisted its adoption, on the ground that it would excite great discontent among the zemindars and arouse violent opposition as a change in the direction of farther centralization, which, while imposing upon the land and upon village communities the burden of providing for the means of paying the village police force, deprived each of his interest in the village police, which from time immemorial had been recognised and acted upon.

Considering the wide diversity of opinion which prevailed generally as regards both the principles and details of Sir Charles Hobhouse's Bill, and the necessity which further consideration established of more detailed enquiry as to the respective rights of the Government, the landholders, and occupants of villages in connection with police chakeran lands, the Government was induced in 1866 to appoint a special officer to investigate the subject *de novo*, and Mr. D. J. McNeile was deputed to undertake the duty. His enquiries extended to almost every district under the jurisdiction of the Lieutenant-Governor, and the results of his personal investigation and research are embodied in the volume which he (Mr. Thompson) had now before him. With the historical portion of Mr. McNeile's report the council had no concern at present. He (Mr. Thompson) would briefly state the proposition which Mr. McNeile submitted, based on the opinion of the utter inefficiency of the present system of the rural police either for the detection or prevention of crime, and on the impossibility of removing the inherent radical defects of the system by any superficial treatment.

His proposal was the entire abolition of the present village watch as an establishment, and the appointment in its place of a body of policemen to be selected and appointed by the executive authorities, and to have jurisdiction within circles within each district of a magistrate; the entire force being in direct subordination to the regular police. As described by Mr. McNeile himself, the security and the protection of the country were to be attained by garrisoning the country with an organized subordinate constabulary, all its members being residents of the circles of villages within which they were employed.

Of course the proposal met with strong opposition. It was objected, as Mr. McNeile himself seems to have anticipated, that his measure virtually provided "for the enrolment of an army of plundering ruffians to be supported in all their extortions and cruelties by the authority of Government." It was objected, and with very strong reason, that the change which he contemplated was a revolution and not a reform; that the supersession of the institution of a village police by what to all intents and purposes was an inferior grade of constabulary deprived the executive of the services of a class who combined local knowledge with a kind of influence among the village communities, and that the absence of such a link between the regular police and the people would always work unsatisfactorily; that it was contrary to the wishes of the natives of the country, and subversive of the principles on which the village watch had always been recognized as a municipal institution. It was under such circumstances of a general hostility to the principles which had been previously submitted for the reorganization of the rural police that during last year a committee was appointed to reconsider the whole question with instructions to frame a draft Bill for the reform of the village police on the principle of affirming the municipal chara ter of the rural police and

providing the simplest possible means for insuring the regular and prompt payment of their wages.

He had the honor to be associated on that committee with two able members of the civil service and an hon'ble member of council now absent, and the present Bill was the result of their investigations on the subject. It was proposed under its provisions that the village police of the country should be brought under one uniform system of a force remunerated by money payment, and that this force should be distinct from the regular thanadari police.

The Bill proceeds upon the recognition of the fact that the village chowkeedar is purely a village servant, employed for the protection of the lives and property of the villagers, and looking to the village community for the regular payment of the remuneration to which he is entitled.

It was proposed that a punchayet should be appointed in every village where it is practicable, and that such punchayet shall, under the general control of the magistrate of the district, appoint and maintain the village watch, supervise its work and secure its regular payment, and that each member of the punchayet shall be responsible for the due report of all crime to the police.

The duties of chowkeedars are definitely prescribed, and are chiefly of a character which connects them as a subsidiary force to the regular police in supplying, what is chiefly wanted, prompt information of all criminal attempts or occurrences which their local knowledge and position will enable them to give.

Thus far as regards those chowkeedars or village watchmen who are in receipt of a monthly salary. But as he (Mr. Thompson) had occasion before to explain, there are many districts in Bengal, particularly in Western Bengal, where the system of payment by assignments of land prevails. In such places it will be clear that the enforcement of money-payments in lieu of allotments of land will effect a complete revolution of the existing system. Personally he had wished that this part of the measure had been entirely omitted. On a former occasion he adverted to this view, and suggested that as the question of chowkeedars paid by allotments of land was a larger and very much more complicated question, it would be better for the present simply to provide for the re-organization of the village policeman who is the recipient of a cash salary, and subsequently to consider the more difficult questions connected with chakeran lands. At the same time he was free to admit that if by one comprehensive measure the council could settle the difficulties connected with both parts of the village watch system, a large measure of reform would be secured.

He would take the opportunity of pointing out some of the difficulties which would be met in dealing with the subject of chakeran lands, and which have not been entirely solved by the provisions of the Bill before the council. Before the punchayet system can be introduced in those places where the police is paid by allotments of land, we have first to undo existing arrangements. We have practically to say to the zemindar:—"The chowkeedar in this village is paid by an assignment of land appertaining to your estate: the produce of this land was placed to the credit of the zemindar when the rental on your estate was fixed in perpetuity. The Bill proposes now to take the land away from the chowkeedar, to resume it, and make it over to the zemindar, and to assign to him two-thirds of the rental for the surrender of any rights which he may have enjoyed in the services of that chowkeedar, while the remaining one-third will be taken to form, or help to form, a watch fund as a contribution towards the payment of the chowkeedar." In carrying out this proposal difficulties will arise, for the chowkeedar may have been for a very long time the occupant of the land proposed to be taken away from him, and he might object to a course which by a very harsh and arbitrary measure deprives him of his rights, takes away the land to the possession of which he has for a very long time been entitled, and restores him to the position of the simple recipient of a monthly police salary.

Again, the village communities may object that whereas the practice has always been to remunerate the chowkeedar by an assignment of land, it will be unjust to force them to pay

a rate. It will also be seen that in some places a commission is proposed to ascertain and determine where chakeran lands have been alienated from their proper uses.

All these difficulties suggest themselves when the complicated question of disposing of the chakeran lands assigned to village chowkeedars for their services comes up for consideration. But the Bill has been framed in accordance with the views of the committee, though in submitting it as the committee wished, he (Mr. Thompson) reserved to himself the right of objecting to that portion of the Bill which dealt with the question of chakeran lands. The select committee to whom the Bill will be referred can determine whether these larger provisions should be considered in connection with the present measure.

One word as to the objections raised to the system of appointing punchayets for the assessment and collection of the rate. The proposition is essentially of a novel nature and must be tentatively enforced, and therefore power is reserved to the Lieutenant-Governor to extend the system to such places as he may think fit. Objections have been taken in many places to the establishment of such an agency, and one commissioner, who combined experience with great intelligence on all such questions, said that he hoped these provisions would not be enforced in his division, as it would take ten years to establish the system of punchayets in the districts under him. He (Mr. Thompson) would simply reply in answer to that, that while he doubted altogether the estimate formed as to the system requiring ten years for its introduction in any division, still even if it required ten years, very much greater advantage would be gained by it than by the present system, under which no means at all existed of communication between the magistrate and village communities. All that directly tended to facilitate means of communication between the magistrate and the people would be of assistance to executive administration. Demands are constantly made on the Government with which it is impossible to comply in the absence of any kind of local agency, and the object partly of this measure is to provide an agency, by means of the head and principal men of the village, who can assist the magistrate by all kinds of local information, and thus indirectly secure the better administration of the country in improving the position of the village chowkeedar.

With these remarks Mr. Thompson moved that the Bill be read in council.

The Advocate-General said that perhaps he might be allowed to say one word by the suspension of the rule in accordance with which the council does not discuss the principle of a Bill on the motion to obtain leave for its introduction. With reference to what had fallen from the hon'ble member with regard to the question as to chakeran lands being left for the consideration of the select committee, he (the Advocate-General) wished to reserve to himself the power of bringing forward that question on the motion that the Bill be read in council. It was a question of general principle that ought to some extent to be discussed by the council before the Bill was referred to a select committee.

The motion was agreed to.

Mr. Rivers Thompson moved that the Bill be referred to a select committee, consisting of Mr. Schalch, Baboo Isser Chunder Ghosal, Mr. Robinson, Baboo Joteendro Mohun Tagore, and the mover.

The Advocate-General said he was under the impression that the motion made to-day was for leave to introduce, and not that the Bill should be read in council. He might, however, now say that from such information as he had been able to gather from the hon'ble mover of the Bill, and also from the very lucid statement just made by him, that it should be an instruction to the select committee to consider the propriety or otherwise of the present measure dealing with the question of assigned lands. Considering that it really did involve a question of general principle, he (the Advocate-General) would prefer that it should be a special instruction from the council to the select committee to consider whether or not the measure should deal with the alteration of the system as regards the large number of cases in which under the present system the services of the chowkeedar had been and are remunerated by assignments of land. He thought that the select committee should deal with the details of the Bill with some general instructions of that kind.

THE PRESIDENT said, with reference to the additional question which the learned Advocate-General wished to have put to the council, that there was no objection to its being put if the Advocate-General desired it; but the question seemed to him (the President) to be hardly necessary, and he was not sure that it was quite regular: the mention of the point which had been raised by the hon'ble mover of the Bill and the learned Advocate-General was of itself quite sufficient to ensure the attention of the select committee being given to the subject.

THE ADVOCATE-GENERAL having acquiesced in the view stated by the President—

The motion was agreed to.

COURT OF WARDS.

MR. MONEY moved that the report of the select committee on the Bill to consolidate and amend the law relating to the court of wards within the provinces under the control of the Lieutenant-Governor of Bengal, be further considered in order to the settlement of the clauses of the Bill.

In the postponed Sections 78 and 79 the blanks were filled up with the words "1st day of June 1870" as the date for the commencement of the operation of the Act.

Section 80 was agreed to.

Schedule A., providing the form of obligation to be executed by a manager, having been read—

THE ADVOCATE-GENERAL said that he had mentioned on the last occasion when this Bill was under consideration that he would propose some amendments in the schedules. The forms appeared to be taken word for word from those contained in the Regulation of 1793, but it seemed to him that they were susceptible of a good deal of amendment. As it stood, there would be some difficulty in determining the precise character of the instrument with reference to the value of the stamp to be impressed. The form in which he proposed to frame the schedules would make it an agreement for which an uniform stamp of eight annas would be required: as it stood now it was open to the objection that the agreement was entered into without any knowledge of the exact amount of the manager's liability. It was also proposed that instead of referring to the regulations passed by the Lieutenant-Governor, the engagement should refer to the provisions contained in Part VII of the Act. Practically there would be no difficulty in the way of the manager knowing what his duties are, as on appointment he would receive a copy of the sections of the Act which related to his duties. There was another alteration which it would be desirable to make if only to make the form correspond with the system universally adopted as regards all engagements entered into either with the local Government or the Supreme Government in reference to the consequences of a breach of trust. As the form stood the result would be that a person committing a breach or abuse of trust would be liable to make good treble the amount of embezzlement or injury proved against him. It would therefore be necessary in every case to prove what was the particular amount of injury suffered, which it might not always be possible to do; and secondly, there seemed no reason why managers and guardians should be put in a different position, as regards the payment of treble the amount of the injury suffered, from any other person holding a fiduciary position as regards the Government. He (the Advocate-General) would therefore propose, instead, a clause for the payment of liquidated damages. Schedule B. regarding guardians was, *mutatis mutandis*, the same as Schedule A.

He moved that the following schedules be substituted for Schedules A. and B. as they stood in the Bill:—

"SCHEDULE A.—*(Referred to in Section XXXVI.)*

FORM OF AGREEMENT TO BE EXECUTED BY A MANAGER.

I, A. B. having voluntarily taken on myself the management of the estate of C., disqualified proprietor of D., do hereby engage with the collector of E. that I will manage the said estate diligently and faithfully for the said proprietor, and will use every means in my power to improve the same for his [her] benefit, and will act in every respect for his [her] interest in like manner as if the estate were my own. I also engage with the

said collector to observe in all respects the provisions regarding managers contained in Part VII of Act of 1870 of the Council of the Lieutenant-Governor of Bengal, and that I will derive no personal advantage from the management beyond the remuneration granted to me as manager. In the event of any breach of trust, neglect, or omission as manager being proved against me, I will pay to the said collector Rs. as liquidated damages.

SCHEDULE B.—*(Referred to in Section LVI).*

FORM OF AGREEMENT TO BE EXECUTED BY A GUARDIAN.

I, A. B. having voluntarily taken upon myself the guardianship of C., disqualified proprietor of D., do hereby agree with the collector of E. that I will execute the trust committed to me diligently and faithfully, and according to the provisions regarding guardians contained in Part VII of Act of 1870 of the Council of the Lieutenant-Governor of Bengal, and that I will derive no advantage directly or indirectly from the ward's allowance beyond the remuneration granted me as guardian. In the event of any breach of trust, neglect, or omission being proved against me, I will pay to the said collector Rs. as liquidated damages."

The motions were severally put and agreed to.

Amendments rendered necessary by the introduction of the new schedules were then made in Sections 33 and 53.

On the motion of BABOO JOTEENDRO MOHUN TAGORE a further amendment was made in Section 53 by the addition of a proviso to the effect that no security shall be required from a testamentary guardian.

On the motion of THE ADVOCATE-GENERAL Section 55 was again amended with the object of providing clearly that no guardian shall be appointed nor continued for a female ward if she has an adult husband.

Verbal amendments were made in Sections 63 and 64.

The postponed Section 1 and the preamble and title were agreed to.

The council was adjourned to Saturday, the 5th March.

By order of the president the council was further adjourned to Saturday, the 12th idem.

By subsequent order the council was again adjourned to Saturday, the 19th idem.

Saturday, the 19th March 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*

J. GRAHAM, ESQ., *Acting Advocate-General,*
THE HON'BLE ASHLEY EDEN,
A. MONEY, ESQ., C.B.,
A. R. THOMPSON, ESQ.,
V. H. SCHALCH, ESQ.,
BABOO ISSUR CHUNDER GHOSAL,
BABOO CHUNDER MOHUN CHATTERJEE,
T. M. ROBINSON, ESQ.,
F. F. WYMAN, ESQ.,
AND
BABOO JOTEENDRO MOHUN TAGORE.

NEW MEMBER.

MR. GRAHAM took the oath of allegiance, and the oath that he would faithfully fulfil the duties of his office.

CALCUTTA PORT IMPROVEMENT.

THE HON'BLE ASHLEY EDEN moved that the report of the select committee on the Bill to provide for the maintenance and improvement of the port of Calcutta be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses be considered for settlement in the form recommended by the select committee. He said that before going into the discussion of the Bill, clause by clause, he proposed briefly to run through the Bill, and draw the attention of the council to the principal amendments made by the committee, and give the reasons on which those amendments were based.

As regards the title of the Bill, he would observe that it had been altered so as to accord more nearly with the scope and object of the Bill, the original title being considered too wide in its terms. But he would not go into that point then, as the matter would be brought prominently under consideration when they proceeded to consider the clauses of the Bill.

The first important amendment was in the number of the commissioners to be appointed under Section 2. There seemed to be a strong desire to have seven commissioners independently of the chairman and the vice-chairman: therefore as the Bill stood it provided for the appointment of nine persons, of whom one should be the chairman and another the vice-chairman. The committee had also limited the tenure of office of the commissioners to two years, making them eligible for re-appointment: it seemed expedient that there should be some period fixed at the expiration of which the appointment should lapse.

As regards Section 7, which provided for a specification of the amount of debt at present due from the commissioners to the Secretary of State for India, the select committee had been obliged to leave the schedule untouched, as they were not in a position to fix the exact sum which would be due on account of the works to be taken over by the commissioners. There seemed to be some doubt as to what the section really meant, and he would therefore explain that the sum referred to was simply the actual cost of the jetties erected under the present Port Improvement Act, and did not refer to any moorings or other works belonging to the port fund.

The committee had introduced a new section, 9, enabling the commissioners to anticipate the payments due to the Secretary of State under the provisions of Schedule B.

From Section 27 the committee had struck out the provision which made the proceedings of the commissioners open to the inspection of the public on payment of a fee of eight annas: it seemed very undesirable to put it into the power of every body to call and make an inspection of the minutes of the commissioners' proceedings, which might lead to great mischief, and a good deal of intriguing and jobbery by contractors and others. If the accounts were published there was no reason whatever for making the commissioners' proceedings public.

The committee had also struck out Section 37 of the original Bill, which compelled the commissioners to record resolutions made by the Lieutenant-Governor, and to adopt such resolutions as their own. The Lieutenant-Governor had already the power of vetoing any resolution of the commissioners under a previous section, and it seemed anomalous to give him the further power of passing an order against the opinion of the commissioners, and that they should then be compelled to adopt the resolution as their own.

The old Sections 38 to 41 had been consolidated into the present Section 35, which provided that no new work should be commenced by the commissioners until a plan and estimate of such work shall have been submitted to the Lieutenant-Governor and sanctioned by him, the further sanction of the Governor General of India in Council being required if the estimated cost of the work exceeded two lakhs of rupees. The section was a new and short one, and the procedure under it was a great deal simpler than under the sections for which it was substituted.

Section 34 of the original Bill, relating to the mode of executing contracts, had also been struck out as unnecessary.

The new Section 39 might, perhaps, cause a misunderstanding if its purport was not explained: it enabled the commissioners to provide steam-tugs and to employ them in towing vessels in the river. It was not intended that the commissioners should start tug vessels in competition with private companies, but it seemed certain that the commissioners must keep tug steamers for their own works, and it would be very unreasonable if the commissioners should not be at liberty, when they had no employment for their steamers, to use them in any remunerative way. The primary object would be the employment of the steamers in connection with the working of the jetties; when not able to employ them in that way, it was only right that they should be able to make a profit from them instead of leaving them idle.

The committee had struck out the proviso to Section 42 of the original Bill as to the total amount of money to be raised by the commissioners. It seemed an anomalous provision in

a Bill like the present. It would be absolutely necessary to obtain whatever money was really required for the sanctioned works, and as the money would practically have to be given by the Government, and the entire control would be in the hands of the Government, it seemed unnecessary to limit the amount to be raised.

From Section 51, the select committee had omitted the provision which was contained in Section 53 of the original Bill permitting the landing and embarkation of certain articles free of charge. The committee could see no reason why some small rate should not be levied on all articles which made use of the commissioners' works, which were constructed and kept in repair for the convenience of trade: the articles enumerated in the section, bricks, straw, and market produce, were as well able to pay a toll as any other.

From Section 52, which compelled the commissioners to provide ghâts and bathing places, the committee had struck out that portion of the proviso which compelled the commissioners to provide such sufficient bathing ghâts "as shall be required for the convenience of the public." Under the section as amended the commissioners would be required to provide a ghât for every ghât they took away, but they were not to be compelled to provide an unlimited number of ghâts.

Section 54 was a new section enabling the commissioners to take possession of jetties, piers, and so forth, erected or built without the sanction of the Lieutenant-Governor, below high-water mark within one mile of the limits of the port, if the limits of the port should be extended so as to include the jetty, pier, or other work so made. That seemed rather a strong proceeding at first sight, but any person desiring to erect any such work had only to guard himself by first obtaining permission to undertake the work. The river-bed below high-water mark was the property of the crown, and if persons chose to erect works in the river below high-water mark without due permission, they must suffer for their want of precaution and be treated as trespassers.

Sections 58 to 60 were new, and gave power to the commissioners to require the conservator of the port to order up any ship as it came in to take up a certain position alongside a jetty for unloading. There seemed to be some misapprehension as to the effect of these sections. As the sections stood no ship could be moved after commencing to discharge or take in cargo: the sections would only apply to vessels as they came in, or before they had commenced to load or unload. Section 60 contained the same provisions as regards country boats.

The committee had struck out the latter part of Section 58 of the original Bill (Section 61 of the Bill as it now stood), laying down maxima rates and tolls: it was found quite impossible that the council should go into the many questions which of necessity arose on any attempt to draw out such a schedule: it required an accurate and detailed knowledge of the trade of the port, and it appeared to the committee better to leave details of this sort to be determined from time to time by a scale of rates to be framed by the commissioners and approved by the Lieutenant-Governor.

Section 70 empowered the commissioners to apply to the collector of customs to distrain ships for non-payment of tolls; and under Section 71 the officer of Government, whose duty it should be to grant a port-clearance, could be restrained from granting it, in the case of any vessel in respect of which any rates or tolls were due, until the vessel had paid all demands.

Section 89 was rather an important section. It determined the powers conferred upon the Justices of the Peace for Calcutta under Act VI of 1863 in respect of any part of the river or river-bank of the port.

There were some other sections of the Bill which had undergone more or less alteration at the hands of the committee, but they were not of sufficient importance to justify his taking up the time of the council in explaining their provisions.

The motion was agreed to.

THE PRESIDENT said that contrary to the usual practice he should take the title of the Bill first, as he wished to submit to the council the expediency of altering its present form. The title of the Bill originally was "a Bill to provide for the maintenance and improvement of the port of Calcutta." He found that the change to the present title, "a Bill to provide

facilities for the landing and shipment of goods in the port of Calcutta," had caused some disappointment outside, and that would be a good reason in itself, though the title of a Bill did not affect its provisions, for considering any reasonable alteration of the title. Moreover he thought, looking to what the Bill really provided for, that it would be admitted that if the title of the Bill was originally too large, it was now too restricted; because the expression "provide facilities for the landing and shipment of goods" hardly embraced such a clause as that contained in Section 38—the construction and application of dredges and other machines for cleaning, deepening, and improving the river-bed within the port—and certainly did not include the provision in Section 39, to which the hon'ble mover of the Bill had made special reference, namely, the power to charge for steam tugs.

There was another reason why he (the President) proposed to amend the title of the Bill. He might mention that he hoped to be in a position at some future meeting to propose the addition of some sections which would give power to the Government, at a future time, considerably to enlarge the purposes for which commissioners were to be appointed as specified in the Bill: and therefore he now proposed to the council for their consideration the substitution of the following title for that which stood in the Bill as amended by the select committee:— " a Bill to appoint commissioners for making improvements in the port of Calcutta."

Mr. Robinson said that he had not signed the report of the select committee from having been out of town at the time the report was sent in circulation, but it had been correctly noted by the assistant secretary that if he had been here he should have reserved to himself the right to object to some of the provisions of the Bill as amended by the select committee. The remarks that had just fallen from the President had disarmed him of a great many of the objections he was desirous of making as to the limitation of the powers proposed to be conferred on the commissioners, and with reference to that he would beg the attention of the council to the statement of objects and reasons under which the Bill was brought forward. It was there stated—

"It has however been deemed inexpedient to burden the local Government with the direct detailed administration of the port and of its improvement, and the Bill has accordingly been prepared with the object of constituting a mixed board of commissioners to whom that administration may be committed."

It had appeared to him all along that the Bill as placed before the council did not meet the object there stated, for the commissioners were so entirely confined to the executive management of a certain part of the business of the port, subject so closely to the orders and control of the Government of Bengal, that it appeared to him that the Bill would have entailed an additional burden on the Government in supervising and controlling these commissioners as well as the marine department and conservator of the port. It was always understood by the commercial community that the introduction of any legislation on the subject would be with the object that the port itself should actually be placed under the control of the commissioners, subject only in some measure to the supervision of the Government. Some persons had gone so far as to think that that control should be extended from the northern limits of the port to the Sandheads. Without going so far as that, he had always felt that there would be great difficulty in getting the proposed division of authority within the port itself to work harmoniously, and without retarding, instead of expediting business. It certainly was provided in the Bill that the commissioners might call on the conservator to do certain acts, such as removing vessels when necessary; but it appeared to him that it would be far more satisfactory if it was placed in the power of the Government to arm the commissioners, at some future time, with the full powers necessary for the working of the port as now conducted by the conservator. The Bill altogether was an experiment; nothing of the kind had been tried yet within the limits of the port: and he would beg to point out that it would be impossible that this scheme ever should work satisfactorily and for the benefit of the trade of the port unless gentlemen were found of real experience and influence to sit on the proposed commission, and he did not think therefore that it would be wise to limit the duties of the commissioners within the scope of the present Bill. If the Bill were given more extended

scope, and the commissioners were vested with real authority, there would be no difficulty in finding gentlemen of the commercial community to serve on the commission, and give their best attention to the objects of the Bill.

Another reason for considering the subject on a more extended scale was that he could not help thinking that the commercial interests of Calcutta now stood in considerable jeopardy. The opening of the Suez canal, and short communication with Europe by a new class of steamers in connection with the through line of rail to Bombay, would divert a considerable part of the commerce of Calcutta to the western port. He had not found any one prepared to give a decided opinion on this subject. Dependent as it was on so many conditions and changes, the exact bearing of which could not be seen until the new lines of communication were more fully at work, it was difficult to arrive at a positive conclusion: yet there was a feeling, which he confessed was in himself a very strong one, that Calcutta would have to withstand a most serious competition with the western port, especially in its commerce with the Adriatic, the Mediterranean, and the Black Seas. It was not easy to realise the decadence of a great emporium of trade such as Calcutta, but the history of the world has shown that these changes of lines of commerce do take place—and with great rapidity, influenced by very trivial circumstances and by very trifling errors of judgment committed in the first instance. On that ground he would urge on the council that legislation on this subject should be no half-hearted measure. He was sure that if the Government would really call to its aid and give a fair amount of authority and discretion to those merchants who may sit on the commission, and whose interests would be so seriously involved in its useful working, it would influence them in coming to correct and useful conclusions; and he was sure that the Bill would then be readily accepted by the public, and would tend to the benefit of the business of the port.

As he understood the rules of the council, there was no occasion for him to close his remarks with any definite resolution. His Honor the President having communicated to the council that the Government were prepared to consider the expediency of some such extension of the scope of the Bill as he (Mr. Robinson) advocated; therefore having fulfilled his duty, and having acted in accordance with the manner in which his name appeared in the report of the select committee, he would leave the matter in perfect confidence in the hands of the Government, until the additions to the scope of the Bill indicated by His Honor were definitely placed before the council.

The Hon'ble Ashley Eden said that he had heard with some surprise the statement made by the hon'ble member who spoke last, that he was not only prevented by absence from town from signing the report of the select committee, but that he did not think the title of the Bill was sufficiently comprehensive. He (Mr. Eden) understood that the hon'ble member had been present in select committee when the subject was discussed, and that he had agreed to the alteration in the title.

[Mr. Robinson explained that his meaning had been misunderstood: he had, it was quite true, agreed to the amended title as being more suited to the scope of the Bill as it at present stood; but he was all along of opinion that the scope of the Bill should be considerably extended.]

Mr. Eden continued—He regretted that he had not distinctly heard the hon'ble gentleman's last remark. His recollection of the matter was that it was unanimously agreed by the select committee that the original title of the Bill was not a correct indication of its real objects and scope. The committee never considered the propriety of extending the scope of the Bill. It was not in accordance with their instructions to extend the operation of the Bill, which was based mainly on instructions received from the Supreme Government. The committee were of opinion that great misunderstanding had arisen from the title of the Bill being so much more comprehensive than the Bill itself; and the result of this had been an impression on the public mind that there would be clashing between the commissioners and the officers of the port appointed under Act XXII of 1855, who had jurisdiction throughout the port. For that reason the committee thought it would be better to prevent this false conception gaining ground, by changing the title of the Bill from "a Bill to provide for the maintenance and improvement

of the port of Calcutta," to "a Bill to provide facilities for the landing and shipment of goods in the port of Calcutta." That was the only reason why the title of the Bill had been altered. He had not the slightest objection to the enlargement of the title under the altered conditions now for the first time suggested to the council: he quite admitted that if the proposed prospective sections were introduced, the title of the Bill should be altered; and any way, he thought that possibly the present title was too restricted.

THE PRESIDENT said that he had only to add that although, as he had said before, he certainly hoped to see some clause or clauses introduced which would enable a prospective extension of the measure to be effected, yet even if that were not to be done, he should consider the title as proposed to be amended quite applicable to the Bill as it stood.

The motion was then agreed to.

The consideration of Section 1 was postponed.

Section 2 was agreed to with an amendment similar to that made in the title of the Bill.

Sections 3 and 4 were agreed to.

In Section 5 amendments of a similar nature were also made, and the section was then agreed to.

Section 6 was agreed to.

The consideration of Sections 7 and 8 was postponed.

Sections 9 and 10 were agreed to.

Section 11 was agreed to after the correction of a clerical error.

Section 12 related to the disqualifications of commissioners, and provided amongst other things that every person who at any time after his appointment as a commissioner shall accept, or agree to accept, any office or place of profit under this Act, except the office of vice-chairman of the commissioners, should thenceforth cease to be a commissioner, and his office should thereupon become vacant.

THE PRESIDENT said that as the Bill was originally drawn, it was contemplated that the chairman should be the paid officer of the commisson, but the Bill was subsequently altered, and as it now stood the vice-chairman would be the executive officer. It had since occurred to him (the President) that although that arrangement was one that commended itself to him under present circumstances, it might not always be the same; and it was desirable that the Act should be so framed that either the chairman or the vice-chairman might be appointed the paid officer of the commission. He (the President) therefore proposed to amend the substantive provision on that subject contained in Section 15, and to make the necessary amendment in the section under consideration by the insertion of the words "chairman or" before the word "vice-chairman" in line 11.

The motion was carried, and the section as amended agreed to.

Section 13 empowered the Lieutenant-Governor to remove from office any chairman or vice-chairman.

THE PRESIDENT said that he had seen it stated that the reason for removal should be stated in the order, because if no reason was given the Government might arbitrarily remove a chairman or vice-chairman. In his (the President's) opinion there were great objections to the stating of the reasons for which alone the Government would remove a chairman or vice-chairman, nor did he believe that the officer removed would himself desire that the reasons for his removal should be publicly stated.

MR. ROBINSON said that he quite agreed with the President: it would neither be consistent with the dignity of the office of the Lieutenant-Governor, nor to the interest of the member of the commission removed, that the reasons for the removal should be stated.

The section was then agreed to, and so also was Section 14.

Section 15 was amended on the motion of THE PRESIDENT by the inclusion of the chairman as one of the officers who might be paid by salary, and of the vice-chairman as an officer who might be paid by fees, in case the chairman were appointed the paid executive officer.

Section 16 was agreed to after the correction of a clerical error.

The consideration of Sections 17 to 19 was postponed.

Section 20 was agreed to.

The consideration of Section 21 was postponed.

Section 22 was agreed to, with several verbal amendments rendered necessary by the amendment made in Section 15.

Section 23 was agreed to.

In Section 24 five members of the commission, instead of four, were, on the motion of MR. WYMAN, fixed as the number that should constitute a quorum at meetings of the commissioners.

Section 25 was agreed to.

Section 26 was agreed to after an amendment necessitated by the alteration made in Section 15.

Section 27 was agreed to.

The consideration of Sections 28, 29, and 30 was postponed.

Sections 31, 32, and 33 were agreed to.

Section 34 gave the commissioners power to contract for the execution and supply of works, stores, &c., with a proviso that no contract for a greater sum than Rs. 20,000 should be valid without the assent of the Lieutenant-Governor.

On the motion of MR. EDEN the limit was raised to Rs. 50,000, and the section was then agreed to.

The consideration of Section 35 was postponed.

Sections 36 to 40 were agreed to.

The consideration of Section 41 was postponed.

Sections 42 to 48 were agreed to.

Section 49 related to the preparation of estimates by the commissioners, and their submission to the Lieutenant-Governor for approval.

MR. ROBINSON said that as the effect of this section would be almost identical with the 29th section, empowering the Lieutenant-Governor to disallow any resolution of the commissioners, it appeared to him desirable to postpone the consideration of this section also. It gave positive and final powers to the Government of Bengal to pass any orders upon the estimates framed by the commissioners. This was a most important power, which could be so exercised as to override all the acts and proceedings of the commissioners. He did not, however, think that any dead-lock would be arrived at, but it was imposing most serious restrictions on the commissioners, who were supposed to be an independent body and exercise an independent judgment.

THE HON'BLE ASHLEY EDEN said that the section under consideration referred to the annual estimates to be prepared by the commissioners of the works and expenditure proposed for the year, and was entirely different from the other provision to which the hon'ble member alluded, which referred to the resolutions of the commissioners. Surely when the funds for carrying on the works were mainly to be supplied by the Government, it was absolutely necessary for the Government to possess the power of saying what amount of money it could give in the year. This was the very least that could be expected. When the estimate of proposed expenditure came before Government, Government should possess the power to say whether or not it was possible to make the money available during the year. If this section was not passed, the whole control of Government would cease, and Government would be perfectly helpless in the hands of the commissioners. He (Mr. Eden) saw nothing at all unreasonable in the provision.

MR. ROBINSON said he thought that the hon'ble member had overshot the mark in saying that Government would have to provide the funds whether it approved of the estimate or not. There was nothing whatever in the Bill to bind the Government to provide funds for the purposes of the commission. Suppose the commissioners made exorbitant demands, the Government could refuse to supply the funds. As he understood it, the powers of the Govern-

ment were ample, and he did not think it possible that the business of the port would be now brought to a dead-lock by any difference of views between the commissioners and Government on the point of expenditure.

THE PRESIDENT said that he was quite willing to agree to the postponement of the section for further consideration, but he agreed with the hon'ble member on his left (Mr. Eden) in feeling that there was no analogy between this section and Section 29. He could quite understand objection being taken to Section 29, because obviously it might interfere with the powers of the commissioners in their executive capacity. Section 29 gave the Government power to disallow any resolution of the commissioners, but Section 49 was quite a different matter. It simply provided for the annual estimates of income and expenditure. There could be no doubt that the Government would have to provide for whatever expenditure was to be incurred: and though the hon'ble member who spoke last said that the Government were not bound to provide funds, yet if Government accepted the estimate for any particular work, it would be impossible for the Government to refuse to provide the necessary funds to carry out that estimate. As at present advised, he (the President) thought there was good reason why Section 49 or some such section should stand part of the Bill, but he was quite willing that the section should stand over for further consideration.

The further consideration of the section was then postponed.

Sections 50, 51, and 52 were agreed to.

Section 53 provided that no person, save the commissioners, should be empowered to construct wharves and jetties within the port without the consent of the Lieutenant-Governor.

MR. MONEY said he thought the commissioners would have fair ground of complaint if the Lieutenant-Governor gave his consent to the erection of a wharf or jetty without consulting them. He thought the approval of the commissioners should be a necessary preliminary to the construction of any work of the kind contemplated. He therefore moved the insertion of the words "approval of the commissioners and the" before the word "consent" in line 6.

THE HON'BLE ASHLEY EDEN said that he dissented from the opinion of the hon'ble member. Under the amendment of the hon'ble member, the officers of the marine department could not lay down moorings without obtaining the consent of the commissioners. Until the whole conduct of the port was made over to the commissioners, it would be quite impossible to make any such provision. Independently, however, of the Government moorings, it would be inexpedient to place the Peninsular and Oriental Company, the Messageries Imperiales, and other large companies, under the control of the commissioners in this respect. It seemed to him (Mr. Eden) that the commissioners were very likely to take a restricted view of the matter, and require the mail steamers to be brought up to their jetties for loading and unloading, whether it suited the convenience of the public or not. Therefore in this matter it was very desirable that the Government should have the right to give consent to certain classes of works being constructed within the port, independently of the consent of the commissioners.

THE PRESIDENT said that he must express his agreement with the views of the hon'ble member who had just spoken. Under present circumstances, at all events, it would be going too far to place absolute uncontrolled power in the hands of the commissioners to refuse consent to the laying down of moorings or the construction of the other works specified in the section.

MR. MONEY's motion was then put and negatived.

MR. MONEY said he still thought that some provision of the kind was required. The Government might, without consulting the commissioners, sanction the construction of some works that might clash with perfectly different works proposed to be erected by the commissioners: unless the section provided for the Government consulting the commissioners in some way or other, serious inconveniences and difficulties might arise.

MR. ROBINSON said that perhaps the best way would be to postpone the consideration of the section, as there was a possibility of some alterations being made in the powers proposed to be conferred on the commissioners. Possibly this was a matter that would be more satisfactorily determined when the actual powers of the commissioners were defined.

THE HON'BLE ASHLEY EDEN said that the sections which His Honor the Lieutenant-Governor intended to propose referred to some future time, and their provisions could not in any way affect the present discussion. It seemed to him to be unreasonable to provide that the Government should consult any particular authority before passing an order. Of course Government could always consult whom it liked without any legislation on the subject, and unless it was intended that Government was to be bound to follow the advice it got, he could not understand the proposal that the Lieutenant-Governor should consult the commissioners: his doing so or not doing so would really leave matters just as they were. As a matter of fact, no doubt, he would consult them in cases of doubt.

THE PRESIDENT said that it seemed to him that it would be a very unusual provision to give a substantive power and then to tie up the exercise of it by prescribing that the authority to exercise the power was to consult some body else.

After some further conversation, the section was agreed to without amendment.

Section 54 gave power to the commissioners to remove wharfs, jetties, &c., erected without the consent of the Lieutenant-Governor within one mile of the port, in case the limits of the port should be extended so as to include such places.

MR. WYMAN thought that the limit of one mile was too restricted: the limits of the port might in time extend beyond that distance.

THE HON'BLE ASHLEY EDEN said the river-bed below high-water mark was the property of the crown, and even without this section it was unlawful to construct any works on any part of the river bank below high-water mark without the consent of the Government. He saw no object in limiting the distance to one mile.

MR. WYMAN said that if it was not competent legally for any one to construct works below high-water mark, he did not see the reason for fixing any limit whatever. The better plan would be to enact that no one should erect any works on the river bank below high-water mark, and that if they did, the works would be liable to compulsory removal without compensation. He therefore moved the omission from line 6 of the words "within one mile of," and the substitution for them of the word "without."

The motion was carried, and the section was then agreed to.

Sections 55 to 57 were agreed to.

The council was adjourned to Saturday, the 26th instant.

Saturday, the 26th March 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*.

J. GRAHAM, ESQ., *Acting Advocate-General*,
THE HON'BLE ASHLEY EDEN,
A. MONEY, ESQ., C.B.,
A. R. THOMPSON, ESQ.,
V. H. SCHALCH, ESQ.,
BABOO UNOCOOL CHUNDER MOOKERJEE,
BABOO ISSUR CHUNDER GHOSAL,
BABOO CHUNDER MOHUN CHATTERJEE,
T. M. ROBINSON, ESQ.,
F. F. WYMAN, ESQ.,
AND
BABOO JOTEENDRO MOHUN TAGORE.

NEW MEMBER.

BABOO UNOCOOL CHUNDER MOOKERJEE made a solemn declaration of allegiance, and that he would faithfully fulfil the duties of his office.

CALCUTTA PORT IMPROVEMENT.

THE HON'BLE ASHLEY EDEN moved that the report of the select committee on the Bill to provide for the maintenance and improvement of the port of Calcutta be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

Section 58 provided that when any wharf, jetty, &c., was completed, the Lieutenant-Governor, by an order, might compel ships to load and unload at such wharf or jetty.

MR. ROBINSON said that there was a point in this section to which he would wish to call the attention of the council. This was the first section which provided for notices being published for the direction of captains and owners of vessels. The section provided that it should be lawful for the Lieutenant-Governor, by an order published in the *Gazette*, to declare that a wharf or jetty is ready, &c. He wished to know whether it would not be better if the notification were issued by the commissioners instead of by the Lieutenant-Governor. It was thoroughly understood that the Lieutenant-Governor was the controlling authority; but it might be difficult to get captains of vessels to recognize the authority of the commissioners when they saw that such notifications were issued by the Lieutenant-Governor instead of the commissioners. He therefore submitted whether "the commissioners" should not be substituted for "the Lieutenant-Governor of Bengal" as the authority by whom the notification should be issued. In the next two sections the same distinction was made; the Lieutenant-Governor being always put forward as the authority to do this or that, instead of the commissioners.

THE HON'BLE ASHLEY EDEN said that there appeared to be no objection to complying with the views of the hon'ble member in this respect to a certain extent. The amendment could be easily effected by the substitution of the words "it shall be lawful for the commissioners with the sanction of the Lieutenant-Governor by a notification" for the expression "the Lieutenant-Governor of Bengal, by an order;" but personally he did not see any great object in the alteration. There must be some sort of control by superior authority. The commissioners must be looked upon as a party specially interested in the welfare of their jetties and the prosperity of the trust; it seemed necessary that the interests of the public should be protected by restricting the power to declare their wharves open by the additional security of the Lieutenant-Governor's sanction.

MR. ROBINSON having declared his willingness to accept the amendment—

The motion was carried, and the section as amended was agreed to.

Similar amendments were made in Sections 59, 60, and 61.

As to Section 61, MR. ROBINSON observed that he understood that the moorings at the jetties were to be absolutely under the control of the commissioners. He would therefore move the insertion of the word "moorings" after "quays" in line 17.

THE PRESIDENT said he understood that the moorings would not be under the control of the commissioners unless and until they were entrusted with the general management of the port. At present the collector of customs, who stood much in the position of the commissioners, had nothing to do with the moorings: they were entirely under the control of the marine department.

THE HON'BLE ASHLEY EDEN explained that there were separate moorings at the jetties, which formed part of the jetties themselves.

THE PRESIDENT said that if that were the case it would be necessary to include the cost of those moorings in the schedules, as they formed a part of the whole moorings of the port. He believed it had never been intended to include the cost of any moorings in the account to be given in Schedule B. Besides, he understood that the whole of the moorings on the river bank were connected together by a ground chain.

The motion was then carried, and the section as amended agreed to.

Section 62 provided that if the estimated income of the year should be insufficient for the payment of the sums due to the Secretary of State, the commissioners shall, on the requisition of the Lieutenant-Governor, impose a tonnage rate upon the shipping of the port for the payment of the debt.

MR. ROBINSON said that this clause was the strongest illustration of the difficulties that would be created by establishing two authorities within the port. There appeared to be considerable doubt about the meaning of this section. As the law stood a vessel coming into port had to pay a tonnage rate of four annas a ton, and it seemed that it was now contem-

plated to put on another tonnage rate, which would be in effect imposing a second port-due, If the Bill remained in its present form, with two separate authorities working in the port, it would in point of fact give power to the commissioners to make every vessel pay a second port-due. The section appeared to be designed entirely to meet any possible financial necessities of the commissioners that Government might impose upon them. It was not that the commissioners were to fix the charge for any work done, but they were to impose a rate because financial necessities required that they should do so. Surely if the duties of the commissioners were confined to the construction of wharves and jetties, and the loading and unloading of ships, the charges that they should be authorized to levy should be confined to services rendered by those works.

If it should so happen that during any year the receipts of the commissioners were found to be insufficient, it seemed to him that the most reasonable course to follow would be for them to use the powers already given them and increase their charges for work done by them. These charges would mainly fall on the cargoes, not on the vessels, and however objectionable, would be more fairly made than an extra port charge on the vessels, imposed for no work at all done directly for them, or from which they could derive immediate advantage.

It might of course be said that the authorities of any port could increase the port charges, and that vessels in transit might find higher rates levied on arrival at their destinations than existed when owners sent them on their voyages; but the very arbitrary form in which this clause empowered Government to increase the charges of this port would be be looked upon as most objectionable to its true interests, as the commissioners under this Bill would have no voice whatever in deciding upon the necessity of any such increased charge, and their control over the port would therefore be quite nullified.

He submitted that the section should be omitted; of course if the scope of the Bill were extended, it would be a totally different thing. But as the Bill at present stood, he thought that the section should be omitted.

THE PRESIDENT said that he was sorry he could not agree to meet the views of the hon'ble member. The object of the section was simply to afford an additional security for the expenditure which would be incurred in the works to be undertaken by the commissioners. If the hon'ble member had read the correspondence published in the *Gazette* in connection with this Bill, he would see how very strongly this point was insisted on by the Government of India, and he hardly thought it consistent with his duty to the Government of India to agree to the omission of a clause so urgently pressed on this council by the Government of India. Hon'ble members should remember that the section was intended merely as a security for the repayment of the debt due to the Secretary of State. It was not contemplated—he did not suppose that any body contemplated—that in reality it would ever be brought into operation. With the short experience already had of the working of the jetties, his own opinion was that one of the earliest acts of the commissioners would be to reduce the charges without any risk whatever of not having an income fully sufficient to meet all expenditure. Under these circumstances he hoped the hon'ble member would not press his amendment.

THE HON'BLE ASHLEY EDEN said that he thought that too much importance was attached by the hon'ble gentleman to this section; it was not intended to levy an extra port-due under ordinary circumstances for the improvement of the port, but it was intended to provide some special and double security to Government and to the public that the cost of these improvements should not fall on the general revenues. The natural course in preparing the estimates of the year would be for the commissioners to see what the expenditure would be, and then to fix the tolls and charges accordingly. The intention of the section was to provide for the imposition of a supplemental general rate on shipping in case of a miscalculation of the receipts or expenditure, so as to prevent any chance of a deficit which would have to be met by a grant from the imperial revenues. Obviously such a contingency was never likely to arise except under very extraordinary circumstances.

MR. ROBINSON said he was quite aware that this section was very much pressed by the Government of India, but at the same time he really thought that it was a very great pity

that this council should put forward a Bill bearing such a section, and he was sure that it would be looked on by all men of business as most unreasonable and unjust. He would only beg further to remark that the reason why he objected to this clause so very strongly was, that the persons who were affected by it were not resident in Calcutta, but the ship-owners who were at a distance. In England especially they would say that they already paid a heavy port-due (the heaviest he believed levied for entering any port of importance in the world) which they were prepared for, and then without any previous intimation, instead of having only four annas a ton to pay, they might find themselves charged with another port-due, not for any applicances provided for their convenience, or services rendered to the shipping, but simply an additional port-due to meet the payments due to the Secretary of State by this proposed commission, and not even as the act of the commissioners, but forced upon them by the simple will of the Government. He (Mr. Robinson) did not wish to press the matter to a division, in which he was sure to be defeated; but he did wish most strongly to record his opinion that it was not a proper course to be taken with regard to the interests of the ship-owners, and that if the clause was left in the Bill, the council would be looked upon by the commercial world as having imposed an entirely new and very unfair burden upon the trade of this port, making it more unpopular with ship-owners than it was at present, by introducing an element of uncertainty into the expenses of vessels than which nothing was more objectionable to shipping interests.

Mr. Wyman said that if there was any probability of the section being carried into effect, he should certainly object to its retention in the Bill. But he agreed with His Honor, the President, that as far as experience had shewn, there was a probability of there being a reduction of the present charges. Still the course was open to the objection taken by the hon'ble member opposite (Mr. Robinson), that it gave power to levy a second port-due by a body who did nothing to entitle them to raise the due. And he (Mr. Wyman) only hoped that if, in deference to the authority of the Government of India, the section was allowed to stand, it would not be put in force. He simply wished to mention his agreement with the objection raised, and although the council might agree to leave the clause in the Bill, he repeated that he hoped that there never would be occasion to put it in force, as he was sure its operation would give great dissatisfaction to the whole shipping of the port.

Mr. Robinson said that he would offer another suggestion with reference to this clause; he really did feel it so objectionable that he would propose that the further consideration of the section be postponed.

The further consideration of the section, and of section 63, was then postponed.

Section 64 was agreed to.

Section 65 was agreed to after an unimportant amendment made on the motion of Mr. Eden.

Section 66 was agreed to.

Section 67 provided that on the production of a document purporting to be a receipt for the amount claimed as due, or a release for freight, the commissioners might deliver the goods provided they used reasonable care in respect to the authenticity of the document.

Mr. Robinson said that under this section a question would appear to arise as to the extent to which the commissioners should be responsible for their acts. Perhaps the case would not be precisely the same as that of a banker parting with funds deposited with him; but it appeared to be precisely the same as the case of a warehouse-keeper or wharfinger. Take the case of the Bonded Warehouse Association. If a person deposited his goods at the bonded warehouse, and they were taken away from the warehouse by means of a fraudulent signature, the Association would be liable to damages. The section said that on the production of a "document purporting to be a receipt," it would be lawful for the commissioners to deliver the goods, and that would appear to guard the commissioners from all liability. It seemed an extreme case to suppose that a person by merely looking at a signature would be able to decide its authenticity. It struck him that the business limits of Calcutta were so small, that without inconvenience a rule might

be made requiring signatures to be verified; but as the clause stood now, the public had not the protection they ought to have that due care would be exercised by the commissioners before delivering goods.

THE HON'BLE ASHLEY EDEN said that he could not agree with the hon'ble gentleman that a public body such as this corporation was in the same position as a private wharfinger. He did not see that there was in the section any absence of protection of the interests of the public, because it was made a special proviso that the liability of the commissioners would only cease if they had taken reasonable and due precautions to prevent fraud. In every case they would have to prove that they had taken such due precautions and, when due precautions were taken, it seemed to him all that was necessary. He would not bind the commissioners, as proposed, to adopt any special mode of verification of the signatures to certificates of release: no doubt they would in all cases of doubt adopt the course of verification suggested by the hon'ble member, but that was a matter for their consideration, they being bound to show that they had adopted every reasonable means of satisfying themselves. He thought that if they were hampered too much, there would be very great delay in the delivery of goods, and the loss to the general public would be greater if we imposed all these restrictions in every case than it would be under the exceptional cases of loss which might occur by making the process summary.

THE ACTING ADVOCATE-GENERAL said that the hon'ble member who had just spoken had anticipated a good many of the remarks he (the Advocate-General) was about to make. The provision as it stood was reasonable, having regard to the ordinary course of business. Objections had been raised that the commissioners should be bound to obtain a verification of signatures. In reply to that he would observe that if reasonable care was not exercised, the commissioners would be liable; but if they exercised reasonable care, it seemed only just that they should be protected. As regards the measure of reasonable care, it would be for the courts to determine it in the same manner as all other questions of fact; probably the first step would be to ascertain if proper verification of signatures had been obtained. In the case of large mercantile houses, that would perhaps be a sufficient precaution; but with regard to other persons, comparatively unknown, there might be a false verification of a forged signature, and it would be very unreasonable if the commissioners should suffer on that account. The words regarding reasonable care were not to be found in other cognate Acts, but he (the Advocate-General) thought it was a favorable opportunity for introducing words of that kind.

MR. ROBINSON said that, after the explanation given by the learned Advocate-General, he would withdraw his objection to the section passing as it stood. He would only beg to suggest that it would be very desirable that the bye-laws should provide as distinctly as possible for some course in performing this part of their duties to be followed by the commissioners—neglect of which would shew that reasonable care had not been exercised by them in parting with goods. He knew that inconvenience had been felt from the want of any prescribed procedure in this respect. The French steamers and others, for instance, brought out a very large number of small parcels, and practically the agents were subjected to great trouble in finding the persons to whom they ought to be delivered.

The section was then agreed to.

Section 68 provided that if tolls were not paid, or the lien for freight was not discharged, the goods might be sold after the expiration of two months' notice being given to the owner of the goods by letter sent by post.

MR. WYMAN said that this section provided for the issue of notice on the Calcutta agent, and service by post on the consignee, where his address might be known; and declared that the title of the purchaser of the goods should not be invalidated by reason of any omission to send the notice. This he (Mr. Wyman) thought might be fair enough as regards the purchaser; but it seemed necessary also that the owner of the goods should be protected from loss occasioned by any neglect or omission to send notice by post. It might be urged that the inference naturally was, that if the commissioners failed to advertise or send notice by post, they would be liable; but he thought it would simplify matters if it were provided that the commissioners should be liable to the owner if they omitted to give due

notice: the purchaser would then be protected in his title, and the owner would be protected from loss occasioned by the neglect of the commissioners. He therefore moved the addition to the section of the following proviso:—

"Provided that the owner of such goods shall be entitled to claim compensation according to the invoice value of the goods, should such notice as aforesaid have been omitted to be advertised or sent by post in cases where the address of the consignee is known."

THE ACTING ADVOCATE-GENERAL said he understood the effect of the amendment to be that compensation should be given if the goods were sold without proper notice. It seemed to him unnecessary to make a provision of that sort, because the commissioners would be liable in law if they proceeded to sell the goods in an unlawful manner. It seemed contrary to the course of legislation to provide for cases of this sort. It was enough to say what the law was, and for any breach of the law there would be its proper remedy. There was a further objection, as regards the measure of damages, to the proposal that the invoice value should in all cases be the value of the goods, because the owner ought in all cases to prove the value of the goods, and there was no reason to provide that the invoice sent, which might be excessive, should be taken to be the value of the goods. Therefore it appeared to him (the Advocate-General) that there were no grounds whatever for the amendment.

MR. WYMAN said that he had already stated that the inference undoubtedly was that the commissioners would be liable for neglect or omission to give due notice; but it occurred to him that the provision was likely to give rise to many disputes, particularly as to the sending of notices by post, and that there would be a constant succession of lawsuits, which it would be desirable to avoid. It was for that reason that he proposed the addition of the proviso, although he knew it was out of the usual course.

THE HON'BLE ASHLEY EDEN said that he agreed with the learned Advocate-General. We have provided that a certain course should be followed under certain circumstances, and if the commissioners failed to act according to those provisions, they were of course liable; and he did not see that any possible benefit could be derived by the introduction of the proviso proposed, which would neither increase or decrease their liability for failure to comply with the law. He could not see that the amendment did in any way simplify the matter in regard to the amount of proof that was necessary of the posting of the notice, and that really was the only point on which there could possibly be any dispute; the case could turn only on the question whether or no the notice had been posted, and this the commissioners were bound to prove under any circumstances.

MR. ROBINSON said that it appeared to him that the clause was rather more forcible as it stood: it imposed an absolute duty on the commissioners, and there was no necessity therefore of stating the consequences if the duty was not performed.

MR. WYMAN said that as the sense of the council was against him, he would not press the amendment.

The section was then agreed to after a verbal amendment.

Section 69 provided how the proceeds of sale should be applied.

MR. WYMAN said that the concluding portion of this section enacted that if the surplus proceeds were not claimed within one year, they should be carried to the credit of the trust fund. He could not see why, after the lapse of so short a period as a year, the owner should lose what was due to him. There might be cases in which there might be a want of knowledge on the part of a person that money belonging to him was in the hands of the commissioners, or the owner might be absent from the country for more than a year, and it would be very unjust that in such cases he should lose his property. He (Mr. Wyman) thought that the limit of one year was far too little. The money, it should be remembered, was absolutely the property of the owner, and he should be entitled to receive it, if not at any time, at any rate within an extended time. Three years should be the lowest limit that should be allowed, and he accordingly moved an amendment to that effect.

MR. ROBINSON said that he would support the amendment. The period of one year might be sufficient in the case of parties in this country who were well known; but difficulties

very often arose as to any one in this country having authority to act for parties absent in England or elsewhere, and more so in the case of such authority being required to act for the estate of a party deceased: he had known many cases in which much more than one year was required before proper powers could be obtained to deal with the property of parties who died in India. He thought that the time required very considerable extension.

THE ACTING ADVOCATE-GENERAL said that the hon'ble member who spoke last had instanced the case of a person who was out of the country during the time the year elapsed: but the hon'ble member should remember that the law was not made for exceptional, but for general cases. In the Customs' Act the time allowed was one year; and inasmuch as one year was the time fixed for the demand of the surplus proceeds of sale under the Customs' Act, it seemed only reasonable that the same term should be adopted in the present case.

MR. WYMAN said that it did not follow that because the term of one year was fixed under the Customs' Act, subsequent experience had not proved the mistake: the fact of a law being passed afforded no reason why it should not be altered. He thought that the retention of the provision would entail hardship on owners. He would, with all deference, press the amendment.

THE PRESIDENT said, at the same time that it seemed to him a fair point for consideration that the provision which was objected to stood in the Customs' Act—and he believed it to be taken from the much older provisions taken from the older customs' laws—he would ask whether any hon'ble member had heard of any case in which hardship had occurred under that provision. If not, then he saw no reason why the time should be extended.

MR. WYMAN said that he was not aware of the limitation of one year in the Customs' Act having caused any hardship, but still he thought that hardship might occur, and the council should provide against the possibility of any hardship occurring.

THE HON'BLE ASHLEY EDEN said that the Customs' Act was passed on the report of a mixed committee, in which the mercantile community was strongly represented, and he thought the period of limitation there adopted should be retained. It would be very strange if in two Acts of the same nature the period of limitation as to the unclaimed surplus proceeds of sales should be one year in one, and three years in another.

THE PRESIDENT said he would also remark that cases of special hardship that might occur would really be met by the saving clause as to good reason being shewn why the application had not been made within the time allowed.

MR. WYMAN's amendment was then put and negatived, and the section was agreed to.

Section 70 related to the distraining of vessels for the non-payment of tolls.

MR. ROBINSON asked whether there was any necessity for referring the commissioners to the collector of customs for the distraint of vessels; it appeared inconsistent with the other provisions of the Bill. It would appear by this that the commissioners had no authority to do any necessary act for their own protection; and he thought that if they had power to call on the collector of customs to distrain vessels, it would be more consistent with their position to give the commissioners the power to distrain.

THE PRESIDENT said that he did not see anything in the section inconsistent with the position of the commissioners. The section made it compulsory on the collector of customs to distrain when called on by the commissioners so to do. The procedure was taken from the Port Act XXII. of 1855, Section 49, where the intervention of the collector was used for distraining vessels for port-dues.

THE HON'BLE ASHLEY EDEN remarked that no ship, even if it left the port, could leave the river without the permission of the collector of customs, who alone had the authority to refuse port-clearance.

The section was then agreed to.

Section 71 was agreed to.

Section 72 related to compensation for damage to the property of the commissioners.

MR. WYMAN said that the section provided that if any damage was done to the works of the commissioners to an amount not exceeding two hundred rupees, the amount might be

recovered by distress and sale of the tackle, &c., of the vessel causing the damage ; but the section further provided that if the vessel was in charge of an officer of Government, it should not be liable. He should like to know whether it was meant that in that case the commissioners had no claim against the Secretary of State for India. If damage was done to the property of the commissioners through the default or negligence of an officer of Government, it was only fair that compensation should be made by the Secretary of State. Damage caused by a vessel while in charge of a pilot or harbour master would be far less excusable, than when the vessel was not in such charge. It was quite possible that such damages might occur. He should like to be informed, before moving any amendment in the matter, whether the section did mean that no compensation could be claimed in such a case.

THE ACTING ADVOCATE-GENERAL said he thought that there was misapprehension as to the meaning of this section. The only object of the proviso was to meet the case where a vessel was in charge of a pilot or harbour master: in that case the master of the vessel was exempt from responsibility. If the master of the vessel was not in charge he was exempt from the payment of damages. The hon'ble member seemed to consider that this was a proviso in the interests of the Secretary of State and the Government ; whereas it was in the interest of vessels under charge of a harbour master or pilot. The general law was that the master or owner could not be held liable for damages caused from the navigation of a ship whilst in charge of a pilot or harbour master, and this section only provided that in regard to summary proceedings before a magistrate, cases, when the ship was not in charge of an officer for whom the owner was responsible, should not be entertained.

THE PRESIDENT said he thought the hon'ble member must have overlooked the fact that the section merely provided a summary remedy for damages against vessels. Surely if a vessel was in charge of an officer of the pilot service or of the harbour master's department, the *vessel* should not be held responsible. He (the President) apprehended that if damage was caused by negligence of one of the harbour master's or master attendant's department, it would be a question whether the general law rendered the Government civilly liable or not. If the hon'ble member meant to raise that question, and to propose that it should be so specially provided, he might do so ; but that question did not arise under the present section.

MR. WYMAN said that he was merely seeking information. He now perceived that the section only applied to damages against the vessel. Perhaps he might propose some clause hereafter.

MR. ROBINSON said he observed that the section provided that the summons might be issued against the master or *agent* of the vessel. He suggested that "agent" might be a mistake for "owner," as he did not see what the agent had to do in the matter.

THE PRESIDENT said the only object of summoning the agent could be to do so in the interests of the owner, in order to give the agent the opportunity of affording any explanation the matter was capable of. It was perfectly open to the agent to attend or not. It was reasonable to give the agent notice to enable him to come forward and make such answers as he thought fit: the section did not make the agent liable in any way.

MR. WYMAN said it was naturally the interest of the agent to see that the owner was justly dealt with. He thought the section a very proper one, and the agent should be very glad to attend during the investigation of the case in the interest of the owner and in his own interest.

The section was then agreed to.

Section 73 provided a penalty for wilful damage done to the works or property of the commissioners.

MR. SCHALCH moved that the section be omitted. It appeared to him that the definition of mischief in the Penal Code was so wide that there was scarcely any act of the kind that would not fall within its scope. The definition of mischief under the code was—

"Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property, or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits 'mischief.'"

Explanation I—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not."

THE HON'BLE ASHLEY EDEN said he had no strong opinion about the section, but he was quite sure that it would not have been framed if it was not thought necessary to provide for cases beyond the definition of mischief under the Penal Code. The master of a vessel having a rope in his way might, out of irritation, do an act damaging the commissioners' property without intending to cause mischief. It seemed to him impossible that this section could have been framed without some necessity having arisen for such a provision.

MR. WYMAN said he thought there was an advantage in retaining the section, although the provision in the Penal Code might embrace all that was necessary: it was quite possible that the Penal Code might afford a loop-hole for escape; and therefore if this section would give an additional security that damage wilfully caused would be punished, it ought to be retained.

BABOO ISSUR CHUNDER GHOSAL said he would support the motion for the omission of the section, because the provision on this subject in the Penal Code was sufficient. If this section were retained, it would afford a handle for the manufacture of new charges, and would be used as a means of oppression.

THE ACTING ADVOCATE-GENERAL said he confessed he could scarcely conceive any class of cases to which the provision against mischief would not apply: the words in the Penal Code were sufficiently wide to embrace all the offences included in this section. The hon'ble member opposite had suggested the case of a master, out of irritation, cutting a rope that was in his way; but that was a very far-fetched instance, and he (the Advocate-General) thought there was hardly any necessity to multiply offences.

MR. SCHALCH's motion was then carried, and the section omitted.

Section 74 provided a penalty of 10 Rs. for the offence of throwing rubbish on the river bank within the port.

MR. WYMAN thought the penalty was too small. It might happen that the cost of removing the rubbish may cost more than the penalty imposed. He would move that the penalty should be raised to 50 Rs.: he thought that any person who wilfully deposited rubbish on the strand bank should be severely punished.

MR. SCHALCH pointed out that the penalty imposed by this section was the same as that leviable by the Justices for the same offence committed in reference to the streets of the town: he thought that it would be well to keep the same fine for the same offence.

MR. ROBINSON did not see the force of the principle of uniformity now quoted for the second time. It might be both convenient and economical for a person to deposit rubbish on the river bank and suffer a penalty of 10 Rs.

The council then divided on Mr. Wyman's motion:—

AYES—4.	NOES—8.
Mr. Wyman.	Baboo Jotendro Mohun Tagore.
,, Robinson.	,, Chunder Mohun Chatterjee.
Baboo Unocool Chunder Mookerjee.	,, Issur Chunder Ghosal.
The President.	Mr. Schalch.
	,, Thompson
	,, Money.
	The Hon'ble Ashley Eden.
	The Acting Advocate-General.

The motion was therefore negatived, and the section agreed to.

Sections 75, 76, and 77 were agreed to.

The form of section 78 was considerably altered on the motion of MR. EDEN, and section 79 was omitted as unnecessary.

Sections 80 and 81 were agreed to.

Section 82 empowered the Lieutenant-Governor to revoke and annul any bye-law made under the provisions of the Act.

Mr. Wyman said that there was the same objection to this section that there was to the section, which had been struck out of the Bill, empowering the Lieutenant-Governor to direct the commissioners to record a resolution passed by him. It could hardly be supposed that if a collision of opinion took place between the commissioners and the Lieutenant-Governor, and the Lieutenant-Governor annulled the acts of the commissioners, they would consent to continue to be commissioners any longer. It was, no doubt, very unlikely that the commissioners would set themselves up against the Lieutenant-Governor; but if the commissioners unanimously came to a conclusion contrary to the views of the Lieutenant-Governor, and their opinion should have small weight with His Honor, it would bring about such an unsatisfactory state of things that it would render it impossible to carry on the future working of the Act: it would necessarily involve the resignation of the commissioners, and the result would be that a compromise would necessarily have to be effected, instead of there arising, as appeared to be contemplated in this section, a state of defiance between the Lieutenant-Governor and the commissioners. He (Mr. Wyman) thought that the occurrence of such a state of things should not be assumed, for no independent gentleman of position would consent to serve under such circumstances. If a conflict of opinion took place, there was no doubt that one or other of the parties would give way; but if not, the result would be the resignation of the commissioners. He would urge most strongly that this section should be omitted as serving no interest whatever. The state of things contemplated could hardly arise, and if it did arise would result in the resignation of the commissioners: he therefore thought it was a very objectionable clause.

The Hon'ble Ashley Eden said he was unable to agree that there was any sort of resemblance between this section and the section struck out. This was a section which gave the Government power to revoke and annul bye-laws which could only be made, and indeed which only became bye-laws, on the sanction of the Lieutenant-Governor being obtained. No other but the authority which sanctioned bye-laws could have the power to revoke them, and the practical result of the hon'ble gentleman's proposal would be that a bye-law once passed would have to remain in force for ever, however much the public, the commissioners, and the Government might object to it on seeing its practical working. The mover of the amendment seemed to forget that these bye-laws had the force of law, and when a law was once passed surely the authority to alter it should be the authority who passed it. The commissioners could not be allowed to undo what Government had done, and as some one must have that power, if the bye-laws were not to be immutable, whom could it be bestowed upon except the Lieutenant-Governor? The course followed in this case was no new principle: the council had frequently legislated to a precisely similar effect in respect of municipalities and other bodies who were empowered to make bye-laws subject to the sanction of the Lieutenant-Governor. It gave the Lieutenant-Governor no power practically of thwarting the commissioners which he did not possess before, for if he disagreed with them he had only to decline to sanction any bye-law, and it would fall to the ground. If he had this power in the initial stage, why should he not have it also at a later stage when desirous of acting on the experience of the working of a bye-law.

In the other section which the hon'ble gentleman had quoted as analogous to this, and which had been very properly struck out in select committee, he could see no sort of resemblance to the principle of this section. There the Lieutenant-Governor was vested with authority to frame a resolution and send it to the commissioners, who were then bound to accept it as their resolution and bring it on record as such, however much they might object to it.

Mr. Wyman said it would be apparent from the nature of his remarks that he viewed the matter in a different light. But if it was possible to interpret the section differently, and if the intention was not that the Lieutenant-Governor should have the power to override the acts of the commissioners, the intention should be expressed more plainly. But he thought that the clause as it stood was open to a different interpretation from that sought to be put on it by the hon'ble member, and he would suggest the desirability of its terms being so altered as to prevent the possibility of any misinterpretation of its scope and intention.

Mr. Robinson said that he thought a very trifling alteration would make the section satisfactory. The present wording of the clause certainly made it very objectionable. It was

perfectly clear that none but the authority passing bye-laws should have power to annul them. He thought that the section should show that the intention was not to leave entirely with the Lieutenant-Governor the power of annulling bye-laws, which had been passed by the commissioners with the sanction of the Lieutenant-Governor, and this could easily be done by saying that the Lieutenant-Governor, on the recommendation of the commissioners, might revoke, &c. If this alteration were not made he thought that the section should be omitted as quite unnecessary. The two previous sections provided for the preparation and putting into force of bye-laws by the Lieutenant-Governor and the commissioners conjointly, and he could see no reason why any special powers should be given to either authority to undo the work of both. Clause 79 gave a power to the commissioners to vary, alter, or revoke bye-laws, and clause 80 pointed out how the acts of the commissioners were to be made legal by the Lieutenant Governor: he could not see why it was not sufficient to leave them to be revoked by the same process. If a bye-law proved to be useless or inexpedient, there could be no reason to doubt that the commissioners would be as ready to revoke it as the Government.

THE PRESIDENT said that he could not agree with the objection taken by the hon'ble member. It was perfectly true that it was very unlikely that the alteration of a bye-law would take place without the consent of the commissioners; but that there should remain in the hands of the Lieutenant-Governor some such power as was provided in the section under consideration seemed unquestionable. It should be recollected that the commissioners would only represent one special set of interests, and that the Government would stand between the commissioners and the public, whom the bye-laws made by the commissioners might in some respects very seriously affect. And in this and other respects power was given to the Lieutenant-Governor in the interests of the general public. In all probability no occasion to exercise such a power in opposition to the commissioners would arise once in ten years; but still such a power ought to exist in the hands of the Government.

MR. WYMAN said that the remarks which His Honor the President had made seemed to lead to the inference that the view taken by the hon'ble member in charge of the Bill was not the correct one. The President's remarks showed that the objection which he (Mr. Wyman) had taken, that the section would enable the Lieutenant-Governor, if he thought fit so to do, to override the acts of the commissioners, had some foundation. It would be very unpalatable to the commissioners if they knew that the Lieutenant-Governor had the power to override the united opinion of their body; and with all deference he thought that the section might be altered without derogation to the authority and rights of the Lieutenant-Governor. It was certainly very unlikely that the Lieutenant-Governor would annul a bye-law of the commissioners without consulting them. [The President.—Very unlikely indeed.] Still he thought that it should be made obligatory that the commissioners should be consulted as to any alteration or revocation of a bye-law passed by them. He had no doubt that the revocation of a bye-law would only be resorted to when it was for the public good; but as the section stood now it certainly grated unpleasantly on the ear.

THE PRESIDENT said the effect of the alteration suggested was that a bye-law once made could not be altered without the consent of the commissioners. If such was to be the law, it would be exceedingly absurd to pass the section just gone before; because if the Lieutenant-Governor was not to have the power to annul a bye-law once made, why should he have the power to refuse assent to a bye-law proposed. It would be just as consistent to give the commissioners the absolute power to make bye-laws. When the legislature was setting up in a body one set of interests, to give them the power to make bye-laws without the Government on behalf of the public having an overruling power, was out of the question. Therefore he could not for a moment consent to any alteration such as that which had been suggested.

He had no objection, however, to postpone the further consideration of the section, if the hon'ble member on the left (Mr. Wyman) desired it.

MR. WYMAN having acquiesced in the desirability of a postponement—

The further consideration of the section and of the Bill was postponed.

The council was adjourned to Saturday, the 9th April.

Saturday, the 9th April 1870.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*

J. Graham, Esq., *Acting Advocate-General,*
The Hon'ble Ashley Eden,
A. Money, Esq., C.B.,
A. R. Thompson, Esq.,
V. H. Schalch, Esq.,
Baboo Unocool Chunder Mookerjee.
Baboo Issur Chunder Ghosal,
Baboo Chunder Mohun Chatterjee,
T. M. Robinson, Esq.,
F. F. Wyman, Esq.,
and
Baboo Joteendro Mohun Tagore.

COURT OF WARDS.

Mr. Money postponed the motion, which stood in the list of business, that the Bill to consolidate and amend the law relating to the Court of Wards within the provinces under the control of the Lieutenant-Governor of Bengal be passed.

CALCUTTA PORT IMPROVEMENT.

The Hon'ble Ashley Eden moved that the report of the select committee on the Bill to provide for the maintenance and improvement of the port of Calcutta be further considered in order to the settlement of the clauses of the Bill.

The President said that before putting the motion he wished to bring to the notice of the council a recent correspondence on the subject of this Bill between the Government of Bengal and the Government of India. He would have the correspondence laid on the table in order that it might be printed and circulated to hon'ble members; but as it had intimate connection with the amendments lately circulated, and which would be brought forward to-day, it seemed desirable to state the general purport of the correspondence. The letter which he had caused to be written to the Government of India contained two points; first, the general scope of the present measure; and secondly, the powers of control which the Bill proposed to vest in the Government. On both these points strong opinions had been expressed both in and out of this council, and he had therefore thought, having regard to the correspondence which had previously passed with the Government of India, that the best course would be to refer these points again to the Government of India for consideration. He would not take up the time of the council by reading the letter addressed to the Government of India, as it was somewhat lengthy, including extracts from previous correspondence; but he thought that if he read the answer which the Government of India had made, which was short, it would fully explain what the object and purport of the correspondence was. He might observe that in the answer of the Government of India there was a third point not included in the letter addressed to the Government of India, and that related to section 62, on which also there had been a good deal of discussion. With regard to that, since the last meeting, he had had some communication with His Excellency the Governor General, and the result was embodied in the reply received. The letter began as follows:—

"I am directed to acknowledge the receipt of your letter No. 879, dated 29th March 1870, forwarding, with certain recommendations by the Hon'ble the Lieutenant-Governor, a copy of the Bill to provide facilities for the landing and shipment of goods in the port of Calcutta, as amended by the select committee, together with a draft of certain proposed additional sections, and in reply to state that the Government of India generally accepts the Lieutenant-Governor's views and proposals referred to in paragraph 8 of your letter."

So far the letter referred to the general scope of the Bill and to the draft sections which had been subsequently revised, and which stood as sections A to F. Then the letter went on—

"As regards the matters referred to in paragraphs 12 to 17 of your letter, I am directed to remark that the Government of India will be quite satisfied, if a really effectual power is given to the Lieutenant-Governor to control all expenditure, to leave administrative details to the discretion of the Trust to any extent that the Lieutenant-Governor and his council may think fit.

If no expenditure on works or establishments can be incurred unless in accordance with the general budget sanction of the year, or with special sanction of the Lieutenant-Governor, and if works are not allowed to be carried out without proper estimates, which in the case of large operations will require the approval of the Government of India, the Governor General in Council considers that all that is desired will be secured."

Then the letter proceeded to section 62:

"With reference to Section LXII of the Bill, I am to explain that the Government of India has no wish to restrict the rate leviable as security for the advances made from the revenues of India to a charge on tonnage, and that if it is preferred, the charge may be made to fall on the cargo or on goods landed or shipped.

It will be necessary, however, to see that complete provision is made for securing the payment of money due to the Secretary of State in preference to other claims, and in a manner that cannot be rendered inoperative by the action of other creditors. So long as this is done the precise form given to this part of the Bill is not considered material."

This correspondence dealt with all the points with perhaps one exception, on which objection had hitherto been taken, and he hoped it would be found satisfactorily to meet those objections, and that the progress of the Bill to a conclusion would be thereby promoted.

The motion was then agreed to.

THE HON'BLE ASHLEY EDEN said that, instead of first proceeding with the consideration of the last few clauses of the Bill which were not of much importance, he proposed to take up the sections the consideration of which had been postponed, omitting sections 1, 7, and 8, which related to the debt due to the Secretary of State, the amount of which the council were not in a position to fix.

The first section which he proposed to the council to take up was section 12, relating to the disqualification of commissioners. It was now proposed to provide that a commissioner may, "with the sanction in writing of the Lieutenant-Governor," participate in profits from a contract given by the commissioners. The object of the amendment, of which he had given notice, was in particular cases to enable a firm of which a commissioner was a member to undertake a work or contract which perhaps could only be done by that firm, and, on a full consideration of the circumstances, the Lieutenant-Governor might think it expedient to permit that firm undertaking the work. The provision as to sanction would fully protect such commissioner from any imputation of jobbery or corruption. With this view he (Mr. Eden) moved the insertion of the words "save with the sanction in writing of the Lieutenant-Governor" before the word "participate" in line 12 of the section.

MR. WYMAN said he believed that in the deed of association of every public company there was a clause that a person interested in a firm who undertook a contract should not be considered to be interested. He thought that was the better way of providing for the case supposed by the hon'ble mover of the Bill, because if the section were amended as proposed, it would be possible for a person with the sanction of the Lieutenant-Governor to hold a plurality of offices. The proviso at the end of the section included joint-stock companies; he thought that if it included trading partnerships as well, it would be sufficient to meet the cases sought to be provided for, and he accordingly moved an amendment to that effect.

THE HON'BLE ASHLEY EDEN said that he had never heard of a clause like that which the hon'ble member described: he did not see how a member of a firm could be said not to participate in the profits of a work undertaken by the firm of which he was a member.

THE PRESIDENT said that the amendment seemed quite opposed to the principle on which the section was based. He apprehended that the interest which a shareholder had in works undertaken by large public companies was very small indeed: but obviously the case was different as to partners in a firm.

MR. ROBINSON said there was not a very unusual state of circumstances which might affect the question very materially. It frequently happened that only one person constituted a firm, or only one member of a firm was in Calcutta sometimes, and if that person happened to be also a member of the commission, in such a case it was plain that the amendment proposed would be quite inapplicable. He agreed with the hon'ble mover of the Bill that the sanction of the Government, as each case arose, would be far more satisfactory.

The amendment was then by leave withdrawn, and the original motion was agreed to.

In section 15, on the motion of MR. EDEN, several verbal amendments were made.

The following section was, on the motion of MR. EDEN, introduced after section 16 :—

"*XVIa.*—The commissioners shall from time to time prepare and submit to the Lieutenant-Governor a schedule setting forth the number of officers and servants necessary and proper for carrying out the purposes of this Act, and of the salaries, fees, and allowances which it is proposed to assign to such officers and servants, and the Lieutenant-Governor may sanction such schedule, or modify and sanction the same; and every such schedule so sanctioned shall remain in force until some other such schedule shall have been so prepared and sanctioned, and it shall not be lawful for the commissioners to employ any officer or servant for any office or employment not sanctioned in and by the schedule for the time being in force, nor to pay or allow to any officers or servants any salaries, allowances, or fees greater than or beyond those entered in such schedule."

In the postponed section 17, on the motion of Mr. Eden, several amendments were made, which made the section run thus :—

"It shall be lawful for the commissioners at a meeting, from time, to time to make rules for appointing the officers and servants to fill the offices and posts mentioned in the schedule for the time being in force under the provisions of the next preceding section, and subject to the provisions of such schedule for their remuneration and for the suspension or removal of any of such persons, and the appointment of others in their place; and for the payment of such allowances to the said persons respectively, or in case of absence on leave such portion of their salaries or allowances as to them shall seem fit, and from time to time in like manner to alter, vary, or revoke any such rules, and to substitute others in the place or stead thereof."

The postponed sections 18 and 19 were struck out.

The postponed section 21 was agreed to.

Sections 23, 26, 28, 29, and 30 were passed after some unimportant amendments.

In section 35, which related to the works that required the sanction of Government, on the motion of MR. EDEN, Rs. 2,000 was inserted as the minimum cost of a new work requiring sanction.

Section 41 was agreed to.

Section 49 was passed with a slight amendment.

The postponed section 62 provided for the imposition of a tonnage rate on vessels under certain circumstances.

MR. ROBINSON said that with regard to this section he had raised objections both as to principle and details. He would now propose amendments which would remove the principal elements of unfairness existing in the section as originally drawn, and with this alteration he thought no serious objection to its details could be taken, although he was still of opinion that the section might with perfect safety be omitted altogether, as there would, he considered, be no occasion for such a defensive measure for the safety of the interests of Government. The section, as he proposed to amend it, would stand thus :—

"LXII. If on the preparation of the estimate of any year it shall appear that the estimated income of the commissioners for such year, after deducting therefrom the estimated expenditure of such year to be incurred under this Act, will be insufficient for the payment of the sums which under the provisions of this Act will be payable during such year to the Secretary of State for India in Council, or if at any time in the course of a year it may appear that the actual income of such portion of the year as may have then elapsed, and the estimated income of the residue of such year after deducting therefrom the actual expenditure of such past portion and the estimated expenditure of such residue, will be so insufficient, then and in every such case the commissioners shall, upon the requisition in writing of the Lieutenant-Governor of Bengal, from time to time, and to the extent requisite in every case, charge upon all goods landed from or shipped into any vessel lying or being within the limits of the port, whether such goods shall or shall not be so landed or shipped at any wharf, quay, stage, jetty or pier, belonging to the commissioners, such tolls, dues, rates, and charges in addition to, or other than those prescribed by any scale of tolls, dues, rates, and charges for the time being in force under the provisions of section 61 as will, when added to the said income of the year, suffice as nearly as may be for the payment of the said sums in full. Such tolls, dues, rates, and charges shall be fixed and adopted by a resolution of the commissioners at a meeting, and shall be submitted to the Lieutenant-Governor of Bengal, and if the same shall be approved by him, shall be published in the *Calcutta Gazette*, and shall forthwith come into operation and remain in operation until altered or revoked by the commissioners at a meeting, with the sanction of the Lieutenant-Governor of Bengal, and shall be leviable and recoverable in like manner as any other tolls, dues, rates, and charges payable under this Act."

The motion was agreed to.

Section 63 provided that on failure of the commissioners, within one week, to impose the additional rates directed by the Lieutenant-Governor to be imposed, the Lieutenant-Governor might himself impose the rates.

MR. WYMAN said that he had intended from the first to oppose this section, as he thought that the eventuality contemplated under the section would never occur. The section gave the Government powers of absolute taxation without the concurrence of those directly interested in the matter, and who were well able to judge whether the additional taxation was likely to prejudice the interests of commerce or otherwise. Granting that the eventuality might take place of the commissioners declining to levy the additional tax to pay the Government interest and instalment of debt, it was a question whether, in the face of a combined protest on the part of a body of mercantile men, Government would do wisely to levy such a tax. Under such circumstances he thought a reduction of expenditure might be made. He observed with pleasure the liberal alteration made in section 29, and he would be glad if a similar course were adopted in regard to this measure.

THE PRESIDENT said that he was very sorry that the hon'ble member had re-opened this question, as the objection which he took was really not to section 63 but to section 62. Section 63 was purely a section required to give effect to the previous section: it gave the Government power to do that which by section 62 Government was empowered to require the commissioners to do. If section 63 were omitted, he (the President) believed that the Government would still have power to compel the commissioners to do what was required, but it would be by application to the High Court for a writ of *mandamus*. He had stated very strongly before, and the statement was accepted by the hon'ble member on the right (Mr. Robinson), that the Government of India had insisted on the insertion of this provision; and now to take objection to the section giving effect to that provision was to object to the very essence of the whole thing. The hon'ble member said that the section would be inoperative. He (the President) hoped it would be so, but still it was necessary to have a section of this sort.

MR. ROBINSON said that there was a slight alteration, for extending the period after which the Lieutenant-Governor might take action under this section, which he wished to propose. It was quite possible that the commissioners might have reasonable objections to advance, and one week would, by the very shortness of the time, give an appearance of arbitrariness to the clause, which it would be very advantageous to avoid. He thought a fortnight would be a reasonable time to allow for discussion and consideration, and would therefore move the substitution of fifteen days for one week.

MR. WYMAN said he still entertained the opinion that it would be better that the section should be omitted: he would not, however, oppose the amendment.

The amendment was carried, and the section agreed to.

A verbal amendment was made in section 81.

Section 82 empowered the Lieutenant-Governor to revoke and annul any bye-law passed by the commissioners.

MR. WYMAN said that he had not altered his objection to this section. There was no similar provision in the Calcutta Municipal Act VI. of 1863 (B.C.) It was tantamount to giving the Lieutenant-Governor power to override the acts of the commissioners. He (Mr. Wyman) had already given fully, at a previous meeting of the council, the reasons for his objection to this section, and it was not necessary for him to repeat them: the effect of the section would practically be to revoke the powers given to the commissioners under the two preceding sections. He would move that the section be omitted.

THE ACTING ADVOCATE-GENERAL said that he had endeavored to comprehend the force of the objection taken to this section, but had entirely failed to do so. He could understand the objection that the Lieutenant-Governor should not be the revising authority in the making of bye-laws: such an objection would to his mind have no weight, but it would be intelligible. But when once you have given that power, there must be some authority to revoke such bye-laws when they were found ineffectual or objectionable. If this section were

struck out as proposed by the hon'ble member, there would be no power to revoke bye-laws found ineffectual or objectionable. Bye-laws would be passed by the commissioners subject to the sanction of the Lieutenant-Governor, and if they worked badly, or were found otherwise objectionable, there would be no authority to revoke them. When once the Lieutenant-Governor had passed a bye-law, it would stand for good, because there would be no authority to revoke it; because the framing of a bye-law by the commissioners would not of itself be sufficient without the sanction of the Lieutenant-Governor. It was necessary for some body to have the power of revoking bye-laws. It was quite clear that the ultimate authority in the preparation of a bye-law was the Lieutenant-Governor, and if there must be some power to revoke bye-laws, in whom should that power be vested but in the Lieutenant-Governor, who was the ultimate authority in regard to their original enactment? If it was said that the commissioners should be consulted, it would come round to the objection made in a former stage of the Bill, that no joint action of that sort could be vested. A bye-law was good or bad: if bad, the Lieutenant-Governor would take on himself the responsibility of revoking it. It surely would not be proper that the Lieutenant-Governor should be obliged to call on the commissioners before taking that step. Possibly the Lieutenant-Governor would not exercise the power without consulting the commissioners. As the only two alternatives that could suggest themselves were, first, that there should be no power of revocation, a proposition which could not be maintained; and 2ndly, that the power should vest in the Lieutenant-Governor and the commissioners conjointly, which also was not proper or right; it seemed to him (the Advocate-General) that the only course was to leave it to the Lieutenant-Governor, who was the ultimate authority in the making of bye-laws.

Mr. Wyman said he understood the learned Advocate-General to say that the commissioners had no power to revoke bye-laws passed by themselves. He (Mr. Wyman) thought that there was such a power; for the last clause of section 80 said "and from time to time to vary, alter, or revoke any such bye-law so made by them." That seemed to him to give the commissioners the absolute power of revoking their own bye-laws.

The Acting Advocate-General said, the hon'ble member had misunderstood the effect of section 80. No bye-law framed by the commissioners could have effect without the sanction of the Lieutenant-Governor. He (the Advocate-General) admitted that the wording of the section was somewhat ambiguous; but the section simply meant this, that it should be open to the commissioners to make any suggestions for the revocation or alteration of a bye-law in the same manner as they were to frame bye-laws for the sanction of the Lieutenant-Governor. They could not make bye-laws themselves, nor could they revoke them when once sanctioned by the Lieutenant-Governor: their suggestions must be sanctioned before they could have validity. Certainly the wording appeared ambiguous and might be made clearer.

The Hon'ble Ashley Eden said that the hon'ble gentleman who had spoken on the subject appeared to lose sight of the fact that the Bill provided for two distinct processes for the revocation of bye-laws. one was the case in which the commissioners themselves might think that for the proper working of the Act a bye-law which had in practice been found unsatisfactory should be revoked. In that case the commissioners had to make a suggestion for the revocation of the bye-law under section 80, and then it was left for the Lieutenant-Governor under section 81 to sanction the suggestion; and so far as any alteration suggested by the commissioners was concerned, that was perfectly sufficient. But there was another case, namely, that in which, in the interests of the public, the Government might find it necessary to revoke any bye-law passed by the commissioners. It must be obvious that the commissioners would represent only a special interest; their interests might, it was easy enough to foresee, be under some circumstances opposed to the interests of the public at large, or some section of the community entitled to be protected. The commissioners might under such circumstances, and probably would, object to alter their bye-laws, and it was obviously only right and just that Government should then have the power to intervene. This power of revocation, adverse to the commissioners, must be placed in the hands of the Lieutenant-Governor, and he (Mr. Eden) could not conceive that any person on full consideration could doubt that this

was a proper and necessary power to place in the hands of the Lieutenant-Governor. He could not understand the opposition to it.

THE PRESIDENT said it seemed to him in this particular that it would be a proper thing for the Government to possess the power of annulling any bye-law, even if the commissioners should desire to retain it. The hon'ble member on the left had referred to the Municipal Act of Calcutta, and was no doubt correct in his assertion that that Act contained no such provision as the one under consideration. He (the President) was not prepared to say that he did not think that an omission in the Act; but however that might be, a great deal might be said in favor of not giving such a power to Government under the Municipal Act. The municipality of the town was supposed to represent the whole of the inhabitants and the interests of all classes: there was not supposed to be any interest that could be set up in opposition to the interests of the municipality. Then he might observe, looking at it from a practical point of view, that the bye-laws passed under this Bill would have a much wider scope than the bye-laws under the municipality could have. He found moreover that the maximum penalty under the municipal bye-laws was twenty rupees, and ten rupees in case of a continuing infringement; but under this Bill the penalty leviable under the bye-laws might extend to a hundred rupees, and to a sum not exceeding fifty rupees in case of a continuing offence. That clearly made a great difference. He thought also that it must occur to every hon'ble member that it was not an impossible thing that there might be a conflict of interests arising out of this commission: he hoped such a conflict might not arise. But it was possible, for instance, that there might be a conflict of interests between the commissioners and the municipality. The commissioners and the Government might pass a bye-law which the municipality might show to be injurious to the public; and the commissioners might wish to adhere to the bye-law passed. Looking then at the case either from a practical point of view or as a question of principle, there could be no question that the power provided under this section ought to be possessed by the Government in the general interests of the community.

MR. WYMAN'S amendment was then negatived, and the section agreed to.

Sections 83 and 84 were agreed to.

Section 85 was amended, on the motion of Mr. Eden, so as to render it unnecessary that notice of action should be given.

Sections 86 and 87 were agreed to.

Section 88 provided that if any interest or instalment of principal due to the Secretary of State was unpaid for one month, the Lieutenant-Governor might realize the same by appointing a person to receive the rents and profits payable to the commissioners.

MR. ROBINSON said he would suggest that this section should be omitted. If any difference did arise as to the amount due to the Secretary of State, it would lead to the unfortunate result that the commission would be dissolved and could never be re-established. At all events he would make the same suggestion with regard to this section as he did with regard to a previous section, that the period of one month should be very considerably extended, so as to allow some time for negotiations and explanations as to the difference between the commissioners and the Government. It was quite possible that a difference of opinion might arise as to an amount due or when it became due, and many other questions of account might arise with regard to which one month would be too short a period to come to an amicable settlement. He would suggest that one month in this case might safely be extended to three months. If differences of opinion ever arose on this section, and the powers of the Government under this section were put in force, the commission would be broken up, never to be reformed.

MR. WYMAN expressed his concurrence as to the proposed extension of time from one to three months.

THE PRESIDENT said that he would be very glad if the hon'ble member would not press his amendment, as if the alteration he proposed was adopted the labor of the council in the preparation and settlement of the Bill would be in vain. It might be known to the council that an Act of the Bombay council was not long ago vetoed by His Excellency the Viceroy

on the particular ground that it did not contain a strong-enough security for the money which the Government of India advanced. The Bill was vetoed by the Governor General with the intimation that a much stronger power of recovery of the sums due must be given; and he (the President) knew in the present instance that the Government of India insisted very strongly, as the council had heard to-day, on the most perfect security. He believed indeed that this section emanated from the Government of India, and therefore he must advise the council to let the section stand as it was. He did not believe himself that practically it was of the smallest importance whatever.

MR. ROBINSON said that he did not quite see how the extension of the time specified in this section, during which any difference between Government and the commissioners might be discussed and settled, could impair the security of the Government as to the payment of the amounts shewn to be due. He had not the slightest wish to limit the security of the Government in any way whatever. His objection was simply a practical one. It seemed quite possible that a difference might arise which could not be investigated and settled in one month. The section would compel the commissioners to give way and abide by the decision within one month, or throw up their offices as far as the non-officials were concerned. He could not see how the extension of that time could in any way prejudice the Government.

THE HON'BLE ASHLEY EDEN explained that the section did not relate to the adjustment of accounts: it only related to the payment of interest and instalments of principal, the amount and dates of payment of which would be fixed by the schedule.

The section was then agreed to.

Sections 89 to 92 were agreed to.

The following sections were then, on the motion of MR. EDEN, inserted after section 92:—

"A.—It shall be lawful for the Lieutenant-Governor of Bengal, with the previous sanction of the Governor General in Council, at any time after the passing of this Act, by an order published in the *Calcutta Gazette*, to confer on the commissioners the powers of the conservator of the port of Calcutta within the port and such portions of the navigable rivers and channels leading thereto, and connected therewith, as shall be specified in such order, and from time to time by any other order to be in like manner published, to confer on the commissioners the same powers in any other portion of the said river and channels, provided always that no such order shall be made without the consent of the commissioners at a meeting

B.—Every such order may direct that any of the port-dues or fees payable under the provisions of any Act authorizing the levy or requiring payment of port-dues or fees from or in respect of vessels entering or leaving the said port, or being or lying therein or using the said port, shall be received by the commissioners, and shall also specify the amount, if any, of charge to which the commissioners shall be liable in respect thereof.

C.—From and after the publication of any such order the commissioners shall have within the port and the portion of the said navigable rivers and channels specified in such order, all and singular the rights, powers, and authorities in and by Act XXII. of 1855 passed by the Legislative Council of India, or any other Act, conferred on the conservator of the port, and may exercise such rights, powers, and authorities by any officer to be by them thereunto appointed, and the said rights, powers, and authorities shall not be exercised by any other person within the said port or portion of the said navigable rivers and channels.

D.—From and after the publication of any such order, all the port-dues and fees in and by such order directed to be received by the commissioners and payable in respect of any vessel entering or leaving the port, or being therein, shall be payable to the commissioners, and shall be deemed to be a portion of their income, and shall be included in their annual estimates and accounts

E.—From and after the publication of any such order, the commissioners may execute within the port, and the portion of such navigable rivers and channels in such order mentioned, such works as they at a meeting may determine, and all the powers, authorities, restrictions, and provisions contained in this Act in respect to the works by this Act authorized shall apply to such works and to the sanction thereof, the estimates therefor, and the expenditure thereon."

THE HON'BLE ASHLEY EDEN then moved the introduction of the following section after the above:—

"F.—If in any such order the Lieutenant-Governor of Bengal shall specify any amount of charge to which the commissioners shall be liable in respect of the port-dues and fees to be received by them, the same shall be deemed to be a sum of money advanced by the Secretary of State for India in Council under the provisions of this Act."

MR. ROBINSON asked what was the object of the section.

THE PRESIDENT said, immediately on these sections coming into operation the probable arrangement would be that the commissioners would receive the whole of the port-dues and fees leviable within the port, and in consideration of that they would be charged with a portion of the debt which now stood against the port fund; such proportion being probably taken as an equivalent of the actual block which would be made over to the commissioners. The amount would probably be about 18 lakhs of rupees.

MR. ROBINSON said there was another question to be considered. Out of these port-dues a further charge would have to be provided for establishments and the like. He believed that the section was only intended to apply to the sum of money debited to the commissioners as the value of the property made over to them.

THE PRESIDENT said it would apply to whatever sum as between the Government and the commissioners would be debited as block: that sum still remained to be agreed upon. As he had stated before, it would probably be about 18 lakhs.

The section was agreed to.

The further consideration of the Bill was postponed.

The council was adjourned to Saturday, the 23rd instant.

Saturday, the 23rd April 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*

J. GRAHAM, ESQ., *Acting Advocate-General,*
THE HON'BLE ASHLEY EDEN,
A. MONEY, ESQ., C.B.,
A. R. THOMPSON, ESQ.,
V. H. SCHALCH, ESQ.,
BABOO UNOOCOOL CHUNDER MOOKERJEE,
BABOO ISUR CHUNDER GHOSAL,
BABOO CHUNDER MOHUN CHATTERJEE,
AND
T. M. ROBINSON, ESQ.

CONSERVANCY OF THE TOWN OF DACCA

THE HON'BLE ASHLEY EDEN moved for leave to bring in a Bill for improving the sanitation of the town of Dacca. In doing so, he said that the insanitary and filthy state of Dacca was so notorious, that it was perhaps hardly necessary that he should enter into any very detailed description of the state of things under which we were asked to pass a special law for the improvement of that town. As far back as 1713, Dacca was described by a Jesuit priest as the dirtiest town conceivable, and with the exception of certain parts of the town, it seemed clearly to have degenerated ever since then. It was now the focus of cholera and fevers of the worst description, and he would read a few short extracts from reports which have been submitted to Government, which would, he thought, convince the council that the matter was one which called for the promptest and most radical remedy which it was in our power to apply. Mr. Simson, the commissioner of Dacca, wrote about six months ago:—

"The attention of the Dacca public has lately been keenly aroused to the repeated denunciations of the unhealthy state of this city, which has the credit of being the most deadly in the matter of cholera of any city or town in the Presidency of Bengal, if not of any in the whole world, and the present report arises from the action taken by the magistrate of Dacca as chairman of the municipality on the repeated complaints of the learned medical officers, Dr D. B. Smith, sanitary commissioner, Dr J. Wise, and Dr. H Cutcliffe.

The city is unfortunately located, the chief European houses and principal native dwelling places are situated on the bank of the Boorigunga river. This part of the city, though lately embanked in a very handsome manner, is not without a bad reputation, but as you recede from the river, the state of the city becomes worse, a tidal khal runs in a semicircle from near the present barracks and communicates again with the Boorigunga near the centre of the river frontage. The whole back part of the town is a noisome jheel which no efforts of ordinary expenditure could remove, and behind this, to the north and west, is a dense jungle, parts of which have been cleared and lived in at times by natives and Europeans, and by the officers of regiments quartered at Dacca. These compounds and dwellings appear to have been abandoned from their excessive insalubrity. It is not therefore very probable that Dacca can ever be made a healthy city, but the state of the

native town is said to be filthy. There never have been any real efficient arrangements for removal of sewage or excreta in these parts, and an effort is now about to be made to open out the worst places in the town to introduce sanitary measures and proper removal of sewage if possible, and, as usual, the first question is funds. Those funds must chiefly be obtained from the city and its inhabitants."

DR. CUTCLIFFE, officiating surgeon of Dacca, wrote as follows:—

"It must be admitted, I conceive, that in Dacca, for ages past, excreta from the entire population of the city have been allowed to remain in and about the houses and the compounds of the people; that no conservancy system has ever existed; that the water in the wells of the city is horribly polluted, no means being taken to prevent the filth and excreta from finding their way into the wells; and that the river water is fouled by excreta and dirt cast along the bank of the river; that the streets of the city have been laid out without reference to the securing of a proper perflation of air, which in most parts of the labyrinth of narrow alleys, of which the city is chiefly composed, cannot possibly circulate freely; that a pestiferous khâl, fetid swamps, foul tanks, stinking drains, and uncontrolled jungle exist in the very midst of the population—in short that no one can deny that the air which the people breathe is dangerously impure; that the water which they drink is horribly polluted; and that the soil on which they reside, besides being porous, damp, and undrained, is made up very greatly of the decomposing excreta of the present, and the more or less decomposed remains of the past generation."

"In an Indian city thus ill-ventilated, undrained, and reeking with human ordure and filth of every description, it is not surprising that cholera is an endemic and prevalent disease; that dysentery and diarrhœa are always rife; and that fevers ever prevail and characteristically mark their terrible influences on the pot-bellied, spindle-shanked, feeble, and pallid creatures who survive its ravages. But though all this is true, and the ghastly picture painted by Dr. Wise is in no way over-coloured, we yet may see abundant reason to be of good courage, and to resolutely determine to put down these diseases, for they are all of them zymotic and local diseases, and they are therefore preventible diseases."

He (MR. EDEN) was afraid that people had become so accustomed to sensational writings on sanitary matters that they were apt to look upon such statements as these as exaggerated and overdrawn; but looking at the sources from whence they emanate, and the corroborative evidence of a number of witnesses, he thought that the council might safely accept this as a true and plain statement of the miserable state of things which now existed in Dacca.

The people of Dacca were now thoroughly alive to the great evil, and indeed ruin, to trade and the existence of the town if something were not done to remedy this state of things, and the municipality had drawn out a scheme for domestic conservancy, for opening out ventilation by new roads, for removing narrow crowded streets by purchasing up land, and, in fact, relaying the whole town.

The Act which it was proposed to pass was to enable the commissioners to do this. It was proposed to raise a loan, which the commissioners could do under the existing law; but by way of additional security to the lenders, who would most likely be the inhabitants of the town, it was proposed to add a section to enable the commissioners to raise the house-rate from 7½ per cent., which was the maximum under the present law, to 10 per cent. And the Lieutenant-Governor had agreed to make over to the municipality the proceeds of certain ferries, which with the monies they had in hand would enable the commissioners to pay the interest of the loan.

The motion was agreed to.

COURT OF WARDS.

MR. MONEY postponed the motion, which stood in the list of business, that the Bill "to consolidate and amend the law relating to the Court of Wards within the provinces under the control of the Lieutenant-Governor of Bengal" be reconsidered and passed.

CALCUTTA PORT IMPROVEMENT.

THE HON'BLE ASHLEY EDEN moved that the report of the select committee on the Bill to provide for the maintenance and improvement of the port of Calcutta be further considered, in order to the settlement of the clauses of the Bill.

The motion was agreed to.

On the motion of MR. EDEN the following amendments were adopted:

Verbal amendments were made in Section I.

The following words were added to Section XVI*a*:—

"Provided always that artisans, porters, and laborers, and the sirdars of porters and laborers, shall not be deemed to be officers or servants within the meaning of this section."

The following new section was introduced after Section XXXVI:—

"XXXVI*a*.—The salaried chairman or salaried vice-chairman may, for and on behalf of the commissioners, enter into any contract or agreement whereof the value or amount shall not exceed one thousand rupees, in such manner and form as, according to the law for the time being administered by the High Court of Judicature at Fort William in Bengal, would bind him if such contract or agreement were on his own behalf; but every other contract and agreement by or on behalf of the commissioners shall be in writing and signed by the salaried chairman or salaried vice-chairman and by two other commissioners, and shall be sealed with the common seal of the commissioners, and no contract nor agreement not executed as in this section is provided, shall be binding on the commissioners."

The following new sections were introduced after Section XLIX:—

"XLIX*a*.—It shall be lawful for the commissioners, in the course of any year for which an estimate shall have been approved by the Lieutenant-Governor, to cause a supplemental estimate for the residue of such year to be prepared and laid before the commissioners at a meeting, and thereupon such proceedings shall be had as in and by sections 47, 48, and 49 are directed to be had with respect to the estimate therein mentioned."

"XLIX*b*.—It shall not be lawful for the commissioners to expend any sum for any purpose not approved in some estimate for the time being in force, save in cases of pressing emergency, nor shall it be lawful for them to expend for any purpose not so approved any sum exceeding Rs. 2,000 without the assent in writing of the Lieutenant-Governor of Bengal."

The following words were added to Section LIII:—

"Provided that this section shall not apply to moorings laid down or to be laid down by the conservator of the port."

Verbal amendments were made in sections 58, 64, and 71, and in the preamble.

In section 93 the short title was amended from "the Calcutta Wharf Act" to "the Calcutta Port Improvement Act."

The council was adjourned to Saturday, the 30th April.

Saturday, the 30th April 1870.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*.

J. Graham, Esq., *Advocate-General*,
The Hon'ble Ashley Eden,
A. Money, Esq., C.B.,
A. R. Thompson, Esq.,
V. H. Schalch, Esq.,
Baboo Unoocool Chunder Mookerjee,
Baboo Issur Chunder Ghosal,
Baboo Chunder Mohun Chatterjee,
and
T. M. Robinson, Esq.

DACCA CONSERVANCY.

The Hon'ble Ashley Eden moved that the Bill for improving the sanitary condition of the town of Dacca be read in council. He said that at the last meeting he had described fully the scope and objects of the measure, and it was only necessary for him now to make a brief statement of the provisions of the Bill. The first portion of the Bill provided for the raising of the house-tax from seven and a half per cent., the maximum under the existing law, to ten per cent. There was no intention at present to levy the maximum rate of taxation; but as the commissioners proposed to borrow money, and it was desirable that ample security should be provided for the loan, it was thought expedient to give the power of raising the house-tax if found necessary. There was, as he had said, no intention at present of raising the rate of this tax, but it was thought desirable to provide for this object rather than that subsequent application should be made to the council if the sums available for the purpose fell short of the amount of interest to be paid.

Sections 3, 4, and 5 gave power to the commissioners to purchase land, pull down the buildings standing on it, and sell the land at a profit on building leases, after cleansing, levelling, and otherwise improving the land.

Section 6 seemed hardly necessary: it empowered the Lieutenant-Governor to make over to the commissioners the tolls levied on the Dholai khâl, but as the Government could of its own motion vest the management of the tolls in the commissioners, the section might well be struck out in committee.

Sections 8, 9, and 10 gave power to the commissioners to enter premises for purposes of conservancy, and to cleanse them by means of their own establishment; and enabled the commissioners to levy a fee for the purpose of covering the cost of the establishment necessary to perform the work.

The motion was agreed to, and the Bill referred to a select committee, consisting of Mr. Schalch, Baboo Issur Chunder Ghosal, Baboo Chunder Mohun Chatterjee, and the mover.

COURT OF WARDS.

MR. MONEY moved that the Bill to consolidate and amend the law relating to the court of wards within the provinces under the control of the Lieutenant-Governor of Bengal be reconsidered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

MR. MONEY said that the first amendment he had to move was in section 3, and was intended to meet two classes of cases. The court of wards can only take charge of an entire estate the property of one disqualified proprietor or of an estate in which all the shares belonged to persons who were disqualified. In cases where the shares belonged, some to disqualified proprietors and some not to disqualified proprietors, the provisions of Act XL. of 1858 would enable the judge to place under the court of wards such portion of the estate as consisted of land and as would, if the whole estate belonged to disqualified proprietors, come under the charge of the court of wards. That was one class of cases which the amendment was intended to meet: if the judge placed certain shares of the estate under the charge of the court of wards, the other shares belonging to qualified proprietors, this section would enable the court of wards to take charge of the whole estate with the consent of those proprietors. This would be an undoubted advantage. So also when the estate being entirely the property of disqualified proprietors, had been taken charge of by the court of wards, and was afterwards released from the charge of such court in consequence of some one of the proprietors coming of age, if the shares of the still disqualified proprietors should continue under the court of wards by an order of the civil court (sec. 14, Act XL. of 1858,) it was desirable to enable the court of wards to assume the charge also of the shares which belong to qualified proprietors, provided they consented. At the present moment there is a very large estate in the 24-Pergunnahs, some portions of which are under charge of the court of wards, while both the collector and qualified proprietor thought it desirable that the remaining portions should also be placed under the same management. In this case the object has been effected by the qualified proprietor giving a power of attorney to the manager. But this anomaly exists, that whilst the management of the whole estate is practically under the superintendence of the collector and of the court of wards, the shares of the qualified proprietors are nominally managed under power of attorney by the manager alone. He (Mr. Money) would therefore move that the following words be added to section 3:—

"And in case any of the qualified proprietors shall so consent, the management of the shares of such qualified proprietors may be retained or assumed by the collector and carried out under the provisions of this Act, so long as it shall seem fit to the collector and such qualified proprietors."

The motion was agreed to.

Some verbal and formal amendments were made in sections 4 and 6, and a slight amendment was made in section 16. A verbal amendment was also made in section 22.

The following section was then introduced, on the motion of Mr. Money, to fix the date from which the court of wards shall be held to be in charge of property under its care:—

"XXVIIIA.—Whenever it shall have been determined under the provisions aforesaid that the proprietor of an estate is disqualified, the court shall make an order declaring such estate to be subject to the jurisdiction of the court, and directing charge of such proprietor and of his property to be taken, and the collector of every district within which there may be any property of the ward shall, as soon as conveniently may be, take possession of such property, and the court shall be held to be in charge of such property from the time when possession shall have been so taken."

A verbal amendment was made in section 36, and the following new section was introduced after section 44:—

"XLIVA.—In case any attachment be issued from any civil court against any sum of money which may be in the hands of the collector, or manager, the payment of the charges of management and of all Government revenue which may for the time being be due from the estate of such ward shall have priority over such attachment. And no payment shall be made to the attaching creditor from any such sum until full provision shall have been made for the payment of such charges and revenue."

Baboo Chunder Mohun Chatterjee moved the addition of the following proviso to section 62.—

"Provided that no minor shall, without the assent in writing of the Lieutenant-Governor, be removed from the district in which his family residence is situate."

He said that if the section were passed without some such restriction, a minor might without any reasonable ground be sent to Calcutta from the district in which his family resided. In a recent case suitable arrangements were made to the satisfaction of the collector, the most competent authority in the matter, for the education in the district of the minor ward; but notwithstanding that the services of an old and experienced officer in the education department of the Government had actually been engaged, the minor was unnecessarily sent down to Calcutta. It therefore seemed to him (Baboo Chunder Mohun Chatterjee) that some restriction such as he proposed was necessary.

Mr. Money said that his chief objection to the amendment was that we should be making that the rule which was now the exception. It had hitherto been considered that the education given at the wards' institutions at Calcutta and Benares was of a superior class to what can be provided for at the residence of the minor, or obtained in the schools of the district in which the minor resided. The Board of Revenue had lately taken measures to make the education at the wards' institutions available to a much larger number of wards than hitherto by reduction of the charges, and it seemed to him (Mr. Money) that to make it the exception that the ward should be educated at the institution, and the rule that the ward should be educated at his own home or in the school of the district, would frustrate the object for which the wards' institutions were established and maintained on an efficient footing. He could see no possible object in giving the local authorities or the Lieutenant-Governor the trouble of passing orders in every case. If the parents of any ward considered it advisable, from the peculiar circumstances attaching to the position of a ward, or from the rank of his family, that a ward should be educated at home, they could always represent the facts to the collector, the court of wards, and the Board of Revenue, and in all cases there would be an ultimate appeal to the Lieutenant-Governor.

Baboo Chunder Mohun Chatterjee observed that no mention was made in the existing law of the wards' institutions, nor even in the present Bill had the hon'ble member proposed to enact any thing about any particular institutions. Wards might be educated at home or at the sudder station of the district, or anywhere the Board think fit; and it could do no harm to provide that the assent of the Lieutenant-Governor should be obtained previously to the removal of a ward from the district in which his family residence was situated; for we have seen that where the local authorities approved of the arrangements made for the education of a ward in the district, the Board of Revenue had disapproved, and directed the removal of the ward to the presidency town.

The motion was then negatived.

On the motions of Mr. Money and Baboo Onoocool Chunder Mookerjee amendments were made in section 65, which made the section run thus :—

"LXV. With the consent of the Board of Revenue it shall be competent to the court in charge of any ward, in any case in which it shall appear expedient, to sell or mortgage any property of a ward for the purpose of liquidating any just debts due in respect of the property of such ward, or for the purpose of raising any money for the costs of any suit in which the ward may be a party, or for the purchase of any share of any property of which the ward may be a co-sharer and for the default in payment of the revenue of which the ward's share may under the provisions of Act XI of 1859 passed by the Legislative Council of India be liable to sale; and for the purpose of any such sale or mortgage, any conveyance executed by the collector in charge of the ward, under the order of the court, shall be valid to pass the estate and inheritance, right, title, and interest in the property in such conveyance mentioned of such ward and of every person whom such ward, if not disqualified, could have bound by a conveyance made for the payment of the debts of the ancestor from whom such property descended. If the property so ordered to be sold or mortgaged be part of an estate of which such ward be the sole proprietor, or if it be a share of an estate separated under the said Act XI of 1859, and if it shall appear to the court that it will be to the interest of such ward, or of the Government, that such part or share be formed into a separate estate prior to such sale or mortgage being effected, it shall be competent to the court to direct the collector within whose jurisdiction such part or share be situate, to partition it off into a separate estate, and such partition shall be conducted in accordance with the law which may be for the time being in force for the partition of estates."

On the motion of Mr. Money the following section was introduced after section 66 :—

"LXVIA.—If in any suit instituted by or against a ward, any civil court may decree any costs against the manager as guardian or next friend, or against any other person nominated as guardian or next friend, under the provisions of section 66, the court shall cause such costs to be paid out of any property of the ward which for the time being may be in its hands."

Verbal amendments were made in section 68, and the following section was, on the motion of Mr. Money, introduced after it :—

"LXVIIIA.—It shall be lawful for the court to submit to arbitration, or otherwise to compromise, any claim which may be made by or on behalf of or against any ward, and every such submission to arbitration or compromise shall have the same force and effect as if the ward were not subject to any disqualification and had personally entered into such submission or compromise; and for the purpose of any such compromise, any conveyance executed by the collector under the orders of the court shall be valid to pass the estate and inheritance, right, title, and interest in the property therein comprised of the ward, and of all persons whom such ward, if not disqualified, could have bound by a conveyance made for the payment of the debts of the ancestor from whom such property descended."

Mr. Money then moved the omission from section 77 of the words "such person shall defend the suit at his own risk." All the local authorities had represented that the management of the estates of minor wards was an additional duty, and that therefore it was not just to provide that suits instituted in consequence of any mistakes committed in the discharge of this duty should be defended at their own risk and expense. Mr. Money said he did not see why any difference should be made between suits of this kind and other suits in which the officers of the Government were concerned. In reality the provision might be left out altogether, because under the general laws any person may be sued for acts affecting injuriously the property under his charge; but as the provision was contained in the former law, it was thought advisable to retain it in this, so that no doubts might arise as to the personal responsibility of officers connected with the management of wards' estates.

The motion was agreed to.

On the motion of Baboo Onoocool Chunder Mookerjee the following section, taken from Act XL of 1858, was introduced after section 16 :—

"Every collector shall, within six months from the date of his taking possession of the property of a ward under the provisions of this Act, deliver to the court an inventory of all immovable and movable property so taken possession of."

Mr. Money postponed the motion for the passing of the bill.

The council was adjourned to Saturday, the 7th May.

Saturday, the 7th May 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*

THE HON'BLE ASHLEY EDEN,
A. MONEY, ESQ., C.B.,
A. R. THOMPSON, ESQ.,
V. H. SCHALCH, ESQ.,
BABOO UNOOCOOL CHUNDER MOOKERJEE,
„ ISSUR CHUNDER GHOSAL,
BABOO CHUNDER MOHUN CHATTERJEE,
T. M. ROBINSON, ESQ.,
F. F. WYMAN, ESQ.,
AND
BABOO JOTEENDRO MOHUN TAGORE.

VILLAGE CHOWKEEDARS.

MR. RIVERS THOMPSON moved that the report of the select committee on the Bill to provide for the appointment, dismissal, and maintenance of village chowkeedars be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the select committee. In doing so, he said that he would wish to state briefly the course which the select committee had taken in the consideration of this Bill. It would be observed that the committee had maintained in its integrity the principle on which the Bill was originally prepared, and which was subsequently approved by the council on the second reading, namely, the principle of retaining the local knowledge of men resident in the villages in which they were to be employed as police, and of delegating the control and supervision of such police to a committee or punchayet selected from the inhabitants of the village. The committee had done this, it might be admitted, in opposition to the opinions of some experienced authorities; and he would add that it was only late last night that he had received as strong a protest as any recorded, against the policy of introducing such a measure into Lower Bengal, as unfitted for the illiterate village communities amongst whom it was to be enforced now. The discussions on this subject, which have extended over nearly thirty years, in the course of which many suggestions have from time to time been made, had brought to light at least this fact clearly, that after all that had been said or written the practical solution of the admitted evil in connection with the constitution of the village police was reduced to the adoption of one of two alternatives—either to introduce the principle advocated in some quarters, that the Government should appropriate the entire tax, estimated to be about sixty lakhs of rupees, paid for the maintenance of the village chowkeedars throughout the country, and utilize that sum in appointing through its own officers a rural police in subordination to the regular constabulary; or to leave to the village communities the control of their own chowkeedars and by selecting the men from the villages to gain that local knowledge and advantage which such a system conferred. The first was a revolution which, on the plea that every thing connected with the existing system was altogether irremediable, would abrogate it entirely. The second involved the recognition of the present system as capable of improvement, and would attempt, by legislation, to reform and amend it.

There were many eminent names in support of each of these principles of action, and the council were probably aware that in the committee of 1837-38 appointed to investigate the subject, out of seven members five took the view that it would be better to utilize the village institutions as they existed for the management and direction of the village police, while the other two members held that it would be better for the Government to appropriate the amount raised for the support of the village police and out of the proceeds to maintain an independent body of rural police subsidiary to the regular police of the country.

Mr. Thompson had no intention of entering on a discussion of the arguments for and against these two propositions, beyond stating that the adoption of the principle embodied in the present Bill had been determined upon after a careful consideration of the whole subject, and on the recognition of the fact that the opposite view, recently elaborated very carefully by Mr. McNeile, when brought forward by that gentleman, had received almost general condemnation when circulated for the opinions of the local officers and of others capable of speaking with authority on the subject. While on the other hand the view which His Honor the Lieutenant-Governor had suggested of trying to maintain the municipal character of the village chowkeedar, and which the committee of 1868 adopted in their report, had generally met with favor both from the European officers of Government, and, what was of more importance, from many native gentlemen who had considered the subject.

The latter view had been adopted partly from the belief that it contained the germs of a sound principle in the plan of controlling the village chowkeedar and supervising his conduct, which was the immediate object of the Bill, and partly from the conclusion that there were ulterior benefits to be secured from such a measure if ever the village punchayet system was to come into regular operation and become an established institution in the lower provinces. The success or failure of the plan could only be known after trial, and the select committee in determining to adhere to the principle of the Bill fully admitted that it was an experimental measure, and one which would depend for its success on its careful introduction. It has therefore been provided that the measure should be gradually introduced, and full power has been given to the local Government to select the localities in which the experiment should be tried. Certainly the assurance of native opinion is not wanting that the plan can be successfully worked, and the select committee took decidedly the view that it was the best that could be now attempted.

Mr. Thompson had mentioned that it was only last night that he had received a letter from a gentleman who, as the commissioner of a division, could speak with weight upon such a question, and in his report he had dwelt very forcibly upon the difficulty of introducing a measure like this in Bengal, and the impracticability of its working. Mr. Buckland said:—

"In introducing the present Bill to the Legislative Council, Mr. Rivers Thompson stated that there was no reason to believe that any improvement had taken place in the chowkeedars during the last thirty years, but the effect of the proposed Bill will be to perpetuate the services of this class of men, whose character has been so forcibly described by Sir F. Halliday 'as depraved, degraded, and worse than useless.'"

Mr. Thompson admitted that there had been no improvement within the last thirty years, but he did not draw from that the inference that it would always be the same if the present Bill became law. The fact that the police in villages was as bad now as it was thirty years ago is clearly due to the circumstance that in the midst of much writing and talking no practical attempt had ever been made to reform the institution. The main cause to which the committee of 1837 traced the inefficiency and corruption of the rural police is as strong if not stronger now than it was when that committee inquired into the subject. The simple reason was and is still that the men are never paid their proper wages, and that there never has been any legal provision for securing such payments. From first to last every officer who had to do with the subject made this complaint. One of the first witnesses examined by the committee appointed in 1837 stated that the complaint was very strongly prevalent that the village chowkeedars were never paid, and that the only course which remained to the magistrate was to direct the police darogah to levy the amount. The inquiry followed whether the magistrate had legal authority to do so: and it was admitted that he had not, but that such had always been the practice. That which was the common complaint in 1837 had only been intensified by the fact that up to this time no endeavour had been made to improve the position of the village chowkeedar. The evil of non-payment of wages, and of the absence of laws to enforce payments still continued; and the natural consequence was that chowkeedars without pay were

as inefficient and corrupt as they were thirty years ago. Good men would not enter the force, and bad men only entered it with a determination to resort to all kinds of nefarious practices to gain a livelihood. The select committee has clearly attempted to provide a remedy for this. Rules have been made, as simple as could be framed, for the appointment of village committees as an agency to supervise the duties of the chowkeedar, and provision has been made for realizing regularly and paying regularly the wages of the chowkeedar. If these rules can be adequately enforced, as with efficient administration they may be enforced, with the removal of the main evil which has affected the usefulness of the institution, there need be no fear that better men will not be found for village chowkeedars, or that in the discharge of their duties they will not be more efficient and honest than under the present system.

Mr. Thompson forbore from entering at the present time on the question of chowkeedaree chakran lands, because the council would in all probability not entertain that day the consideration of that portion of the Bill. It was confessedly the most difficult part of the subject and would require very careful consideration, and he would reserve to a later opportunity any remarks upon that part of the Bill.

The motion was agreed to.

The consideration of sections 1 and 2 was postponed.

Section 3 was as follows :—

"It shall be lawful for any magistrate, if he shall think fit, by a sunud under his hand and seal, to appoint not less than three nor more than five persons to be a punchayet in any village containing more than eighty houses within the sub-division or portion of a district of which he is in charge: Provided that no such punchayet shall be appointed in any village to which the provisions of Act XXVI of 1850, or of Act XX of 1856 passed by the Legislative Council of India or the provisions of Act III of 1861, or of Act VI, of 1868 passed by the Lieutenant-Governor of Bengal in Council, shall have been extended."

Mr. Thoyesen moved the omission from lines 1 and 2 of the words "if he shall think fit." He said that he did not see why those words had been retained. The intention was that the Act should be gradually extended to districts and sub-divisions of districts, and when so extended by the Lieutenant-Governor it would probably be better that there should not be left to the magistrate any discretion in the matter.

The motion was agreed to.

Mr. Thompson suggested that to give the appointment greater weight and influence, the sunud should be issued by the magistrate "with the sanction of the magistrate of the district."

The Hon'ble Ashley Eden said that if the issue of the sunud was compulsory, he did not see the necessity of the sanction of the magistrate of the district being obtained: the sunud *must* issue on the extension of the Act.

Mr. Schalch said he thought the sunud should be issued by the magistrate of the district, as the appointment would then carry greater weight and be more highly prized.

Mr. Monty said that if the appointments were made by the magistrate of the district it would ensure greater care in the selection of persons to fill the office of a member of the punchayet. The success of the whole measure, he thought, would depend on the men selected for that duty, and he believed it would be a decided improvement to require the sunud to be issued by the magistrate of the district.

On the motion of Mr. Thompson the words "the magistrate of the district" were then substituted for "any magistrate" in line 1, and the words "sub-division or portion of a district" were struck out of lines 6 and 7.

Mr. Thompson further moved the substitution of the word "sixty" for "eighty" in line 6. Eighty houses, he said, constituted a large village, to which the provisions of the District Towns' Act would almost apply, and the benefit of this Bill would, in many cases, be lost if the minimum of eighty houses was retained.

Baboo Joteendro Mohun Tagore said that he objected to the minimum being reduced to sixty houses. Take a village of sixty houses in which the pay of the chowkeedar was fixed at Rs. 6 per month. Such a village would hardly be able to raise the chowkeedar's pay unless each person was assessed at something more than 1½ annas per month. Under Act VI. of 1868 passed by this council, and which applied to a better class of villages than would come under the provisions of this Bill, no individual could be made to pay more than the maximum of 2 annas. This Bill would extend to agricultural villages, and he therefore objected to make the rate of assessment equal to what a richer class of villagers would have to pay.

Baboo Issur Chunder Ghosal said that this Bill would generally apply to rural villages, where very few rich people were to be found; and if the minimum number of houses forming a village be reduced from 80 to 60, he believed the law could not be carried out. His own experience as a native of the country convinced him,—and he believed he might say that the experience of hon'ble members would confirm the assertion,—that nearly one-third of the population of an agricultural village would not be in a position to pay any tax at all, and therefore the tax would have to be collected from the remaining two-thirds. The hon'ble mover of the Bill had not given his reasons for proposing to reduce the minimum of houses that should constitute a village for the purposes of this Act. The reason why in select committee it had been determined to fix the number at 80 was that nearly one-third of the inhabitants would not be able to pay even a tax of one anna a month; and even if the minimum pay of a chowkeedar were to be reduced to Rs. 3, as he (Baboo Issur Chunder Ghosal) believed was to be proposed, a sufficient sum could not be raised if the number of houses was reduced to 60. He therefore submitted that the number should not be reduced.

The Hon'ble Ashley Eden said that he could understand the objections that had been taken to the motion before the council if there were any provision in the Bill that the pay of a chowkeedar should be Rs. 6. It was true the maximum pay of a chowkeedar was fixed at Rs. 6, but that could only be imposed in exceptional cases; and as he understood that the hon'ble member in charge of the Bill intended to propose to reduce the minimum pay from Rs. 4 to 3, and as the fixing of the rate does not rest with the magistrate but with the punchayet, who were supposed to be in a position to know the circumstances of the villagers, we might safely trust them to fix the pay of the chowkeedar at something less than the maximum and something more in accordance with the duties to be performed and the means of the villagers of meeting the demand. Probably in a poor village the salary of the chowkeedar would be fixed at Rs. 3, and a rate of one anna a month would be more than sufficient. If in such a case the punchayet fixed a higher rate, they would be to blame more than the law. As to the limit of houses, he thought a village of sixty houses was large enough to require a chowkeedar of its own, and a great deal of mischief might be done by exempting all villages containing less than eighty houses.

Baboo Joteendro Mohun Tagore said that the punchayet in many cases might not have any option in the matter, for in many places they might not be able to find a fit person to undertake the duties of chowkeedar under Rs. 6 a month, and such cases should be taken into consideration. Then again, the punchayet were required to assess the rate so as to realize for contingencies 15 per cent. over and above the sum required for the pay of the chowkeedar; so that if the pay of the chowkeedar was Rs. 6, with the additional 15 per cent. the rate to be assessed would be nearly two annas per house, instead of one anna.

Mr. Thompson said he had explained that a village of eighty houses was rather a large village, and was one that would almost come under the provisions of the District Towns' Act; and that if the application of the law were limited to villages containing not less than eighty houses, the benefits of the measure would be to a large extent restricted. Again, the reasons on which the hon'ble member who spoke last based his objection rested on two false premises: the first

was that in a small village of sixty houses the punchayet was not bound to appoint a man on Rs. 6 a month, and they would have full discretion to fix the wages at the minimum rate allowed by the Bill; secondly, the calculation that he made of one anna per house was not supported by the Bill, for under the 15th section the rate was not restricted to so much per house. There might be one hundred and sixty persons in sixty houses, who might all be liable. He (Mr. Thompson) must therefore press the amendment.

The council then divided :—

Ayes 6.	Noes 5
Mr. Robinson.	Baboo Joteendro Mohun Tagore.
,, Schalch.	Mr Wyman
,, Thompson.	Baboo Chunder Mohun Chatterjee
,, Money.	,, Issur Chunder Ghosal
The Hon'ble Ashley Eden.	,, Unoocol Chunder Mookerjee.
The President	

The motion was therefore carried, and the section as amended was agreed to.

Section 4 stood as follows :—

"If two or more villages, containing together not less than eighty houses are so situate that some house in each is situate within one mile of some house in each of the others, it shall be lawful for the magistrate to form such villages into a union, and for the purposes of this Act such union shall be deemed to be a village."

On the motion of Mr Schalch an amendment was carried, so as to make it clear that "some house in *one* of such villages" should be situate within one mile of some house in each of the others.

Mr Thompson moved that "sixty" be substituted for "eighty" in line 2.

The Hon'ble Ashley Eden pointed out that this amendment did not necessarily follow in consequence of the one made in the previous section. The case of detached hamlets differed materially from that of a compact village in a ring-fence. If sixty was fixed as the number of houses for unions, a number of very petty groups of huts would come under the Act: he thought that in the case of unions the minimum should be eighty instead of sixty.

Baboo Issur Chunder Ghosal said that though he despaired of being supported in his opposition to the amendment before the council, he thought it his duty to observe that if the villages united for the purpose of forming a union were small, the people inhabiting them would be poor. A village containing one hundred houses generally contained people in better circumstances than a village of fifty houses.

Mr. Money said that so far from the hon'ble member having cause to despair of being supported in his objection to the amendment, he (Mr. Money) thought that the hon'ble member had shewn very clearly why the minimum number of houses for a union should not be reduced. There was no doubt that the smaller the village, the poorer were the people maintaining it. He (Mr. Money) would vote against the amendment.

Mr Thompson said that these smaller villages were very often the property of rich zemindars resident in the place, and for the sake of uniformity he would prefer to reduce the number to sixty as in the previous section.

The motion was then negatived, and the section, as previously amended, was agreed to.

Section 5 was agreed to with a verbal amendment.

Section 6 was agreed to.

Section 7 provided that members of punchayets should be exempt from the chowkeedaree rate.

Mr. Thompson explained that this section was adopted by the select committee, on the ground that it would be accepted as a kind of remuneration by the members of the punchayet and some compensation for the duties which they had to undertake. He thought it right,

however, to state that he had received a communication objecting to this section, because the members of the punchayet would be the men who were best able to pay, and it would perhaps be desirable that the council at large should decide the point.

Baboo Unocool Chunder Mookerjee said that the exemption proposed to be made by this section would hardly operate as a remuneration to the members of the punchayet. He thought they should be liable to assessment like any other person.

Baboo Issur Chunder Ghosal said that the intention was to give a sort of honorary position to the punchayet—not that they should benefit at all, but as a mark of distinction to induce respectable people to serve.

Mr. Robinson said he thought there was one point to be considered, namely, whether the case might not arise in which, if the punchayet were exempted from assessment, there would be any one left who could be assessed at all. In some parts of the country there was only one man in a village of any position whatever, and if he were exempted, there might be a difficulty in being able to raise any tax at all.

The President said there was so much difference of opinion regarding this section, and he confessed that it commended itself so little to his judgment, that he would be glad if the hon'ble member in charge of the Bill would allow the section to stand over for further consideration, a course which would admit of hon'ble members seeing a report that had been written on this point.

The further consideration of the section was then postponed.

Section 8 provided a penalty of Rs. 50 for refusing to act as a member of a punchayet.

Mr. Wyman said he was opposed to the principle of this section. He thought that, instead of endeavoring to compel a man to serve on the punchayet, we should rather endeavour to create in the native mind the feeling that it was an honor to serve on it. He did not feel himself competent to move a positive amendment in a matter of this kind, where the habits and feelings of the native community were concerned, but he thought it right to state the impression on his mind.

Baboo Unocool Chunder Mookerjee said that the object of the Bill was to secure the services of the best men, so that the assessments might be fairly made. Practically, it was most difficult to induce respectable people to accept the office, and he would not object to any thing that would compel proper persons to serve on punchayets.

The section was then agreed to, after a verbal amendment made on the motion of Mr. Schalch.

Section 9 was agreed to.

Section 10 empowered the magistrate to remove a member of the punchayet.

On the motion of Mr. Schalch a verbal amendment was made.

Baboo Jotendro Mohun Tagore moved the addition to the section of the following words:—

"For proved neglect of duty, or when such person has been convicted of any crime punishable with imprisonment."

Mr. Wyman said that he would support the amendment on the ground that it would be very arbitrary for the magistrate to remove a member of the punchayet without any reason for so doing.

Mr. Thompson said this question was discussed in committee, and it was thought better to leave the section in the general terms in which it now stood. When trying to lay down precise rules as to the kind of misconduct for which a member of a punchayet might be removed, it was found that there was a risk of leaving out very many acts for which a member should be removed. The committee thought it better therefore to leave it to the discretion of the magistrate of the district, subject of course to the control of the commissioner of the division, for which the Bill provided.

Mr. Money said he agreed with the hon'ble member in charge of the Bill that a discretion could safely be left in the hands of the magistrate of the district: if we insisted on proof, the section would act in an injurious manner, as improper or unfit persons would have to be retained from want of legal proof.

Baboo Issur Chunder Ghosal said that the magistrate of the district would generally be guided by the advice he received from the magistrate of the sub-division in which the village was situated, and could only act on the report of the sub-divisional officer. For that reason he (Baboo Issur Chunder Ghosal) thought that the magistrate of the district should be required to assign his reasons for dispensing with the services of a member of the punchayet. Such a course would be fair and just to both parties, and be a check to all arbitrary proceedings on the part of any public officer; otherwise no member of any punchayet would be safe in acting on his own honest convictions.

The President said that he was very much in favor of letting the section stand as it was. It would not only be unnecessary but mischievous to fetter the power of the magistrate of the district to dismiss a member of the punchayet until proof of his conviction of a crime punishable with imprisonment. It was very easy to suppose a case in which a member of a punchayet might be tried for an offence and be acquitted, though there might be a very strong moral conviction of his guilt, and to say that in such a case he should continue a member of the punchayet was preposterous. He (the President) therefore hoped that the council would allow the section to stand as it was.

Mr. Schalch said there was another reason why he thought the section should be retained as it stood. If the words proposed to be added were introduced, the office of a member of the punchayet would become permanent; and in his opinion it was very desirable that after a certain time fresh men should be appointed to the punchayet.

Baboo Joteendro Mohun Tagore said that the object the hon'ble member who spoke last had in view could be attained by restricting the period of office of a member of the punchayet. He thought that such an arbitrary power in the hands of the magistrate might destroy all independence of action in the punchayet, and would in effect deter respectable persons from accepting office; for few would like to run the risk of the indignity of being turned out at the mere pleasure of the magistrate. He did not mean to say that the magistrate should have no authority over the punchayet. Let him by all means exercise a wholesome control over their actions; but then let the members of the punchayet know that the tenure of their office did not depend upon the caprice of the magistrate.

Mr. Robinson said that he could imagine nothing worse than for a member of a punchayet who was removed to have the cause of his removal published throughout the district.

The council then divided:—

Ayes 4	Noes 7.
Baboo Jotendro Mohun Tagore.	Mr Robinson.
Mr Wyman	Baboo Chunder Mohun Chatterjee.
Baboo Issur Chunder Ghosal	Mr. Schalch.
,, Unocool Chunder Mookerjee	,, Thompson.
	,, Money
	The Hon'ble Ashley Eden.
	The President.

The motion was therefore negatived, and the section agreed to.

Section 11 was agreed to.

In section 12, on the motion of Mr. Thompson, Rs. 3 was fixed as the minimum pay of a chowkeydar.

Section 13 was agreed to.

In section 14, on the motion of Mr. Thompson, persons other than owners or occupiers of houses, exercising trades or occupations, were exempted from assessment.

Baboo Joteendro Mohun Tagore moved the omission of the words "or occupiers," on the ground that several members of one family might be occupiers of houses belonging to the head of the family, and if the word "occupiers" was retained each member might be called on to pay his quota.

Mr. Thompson said that the members of a joint undivided family occupying the same house would not be liable, but if they occupied separate houses, though within the same enclosure, they would be properly liable.

Baboo Issur Chunder Ghosal said that the members of a joint family might live together but in separate huts, and so long as they messed together they would come under the denomination of a joint family: in such cases they should not be taxed separately.

The President remarked that it would be adopting a new principle not to tax occupiers.

The amendment was then negatived, and the section, as amended, agreed to.

Section 15 related to the nature and amount of taxation.

Mr. Money said that the minimum rate hitherto payable by agricultural villagers was one pice; generally two pice. He would reduce the minimum rate fixed by this section from one anna to half an anna. He did not know on what ground the minimum rate of one anna was fixed: his opinion was that it would be preferable to fix the minimum at half an anna.

Baboo Issur Chunder Ghosal said that if the minimum were reduced to half an anna no poor man would be exempted. The difference between one pice and two pice was so little that all would be brought in. The distinction ought to be broad. His own experience was that the persons who were assessed at one and two pice were the paupers of the village. These poor agriculturalists were ashamed to confess that they could not pay one or two pice, but when the time of collection came they were always in arrear. If the amendment was carried no pauper would be exempted. If it was the wish of the council to make an exemption in favor of the pauper then the amendment should not be allowed. He (Baboo Issur Chunder Ghosal) would therefore oppose the amendment.

Mr. Thompson said he did not think that there was any other reason for fixing the minimum at one anna beyond the convenience of the figure. It was thought that it would exempt the class who ought to be exempted. All our past experience showed that the tax had been realized from the poorest classes, and that the rich had been exempted. He believed that the hon'ble member opposite (Mr. Schalch) had some particular reason for the reduction of the minimum to half an anna.

Mr. Schalch said that he was in favor of the half-anna limit, because one anna was the limit of the old chowkeedaree law which was intended for the larger villages. The villages to which this Act would be extended would be small hamlets, and he thought that the villagers should contribute something, however small: if the minimum was high a greater burden would fall on those who paid. Therefore he thought there would be no hardship in demanding the tax from many who, if the section was left as it stood, would be altogether exempted.

The President said he thought there was a great deal of force in what had been said in favor of the amendment. The punchayet would be unwilling to exempt any one who might have been assessed under the old rate, and they would be let in for the one anna rate rather than be exempted altogether. Therefore on that view of the case he was in favor of reducing the minimum to half an anna.

Mr. Thompson then moved that "half an anna" be substituted for "one anna."

The council divided :—

Ayes 10.	No 1.
Baboo Joteendro Mohun Tagore.	Baboo Issur Chunder Ghosal.
Mr. Wyman.	
,, Robinson.	
Baboo Chunder Mohun Chatterjee.	
,, Unocool Chunder Mookerjee.	
Mr. Schalch.	
,, Thompson.	
,, Money.	
The Hon'ble Ashley Eden.	
The President.	

The motion was therefore carried, and the section as amended was agreed to.

Section 16 ran as follows :—

"The punchayet shall, two clear months before the first day of the year current in the district, make such assessment upon the several persons liable thereto, and shall enter the same in a list which shall specify the name of each person liable to be assessed, the trade, business, or other description of such person, and the amount payable monthly by such person, and such list shall be by them published in the village before the expiry of the said two months."

On the motion of Baboo Issur Chunder Ghosal the words "at least fifteen days" were inserted after the word "village" in the last line.

Mr. Money moved the substitution at the beginning of the section of the words "on or before the 1st of January in every year" for the words "two clear months before the 1st day of the year current in the district." He said that in some places there was more than one year current in the district, and in such cases there might be an uncertainty as to the time when the assessment should be made.

Mr. Thompson said it was thought that the persons inhabiting the villages to which this Act would apply would not be cognisant with the English or the financial year, and that it would therefore be better to refer to the year current in the district.

Baboo Joteendro Mohun Tagore moved as an amendment that the word "village" be substituted for "district" in line 3, so that the year referred to would then be the year current in the village.

Mr. Money's motion being by leave withdrawn, the amendment was carried, and the section as amended was agreed to after a verbal amendment.

Section 17 was agreed to.

Section 18 was agreed to after slight amendment.

Section 19 was agreed to.

Section 20 provided that there should be no appeal from the assessment, but that the magistrate should revise the list on the application of five rate-payers.

Mr. Money moved the substitution of "ten" rate-payers for "five," as he thought it would be unwise to require the magistrate to go over the list of assessment on the application of only five rate-payers.

Baboo Joteendro Mohun Tagore said that as no appeal was allowed, he thought that it would act as a safeguard against the proceedings of the punchayet to require a revision of the assessment on the application of five rate-payers.

Mr. Thompson said he thought that any thing that tended to reduce complaints in these small matters would be an improvement, and he would therefore support the amendment.

The motion was then carried, and the section as amended was passed.

Section 21 was agreed to.

Section 22 was as follows:—

"Every punchayet shall appoint one of their number to receive and collect the rate, and to grant receipts for the same and to keep the accounts thereof, and it shall be lawful for the punchayet to permit the person so appointed to retain any sum not exceeding six per cent. of the amount collected by him to repay the costs of such collection."

MR. MONEY asked what there was to prevent the man selected by the punchayet to collect the rate and keep the accounts from refusing to act.

MR. THOMPSON referred to the allowance of six per cent. to the collecting member of the punchayet as likely to afford an inducement to some member of the punchayet to undertake the duty.

THE PRESIDENT said it had been pointed out to him that under section 8 of the Bill there was a penalty for refusing or omitting to perform the duties of a member of the punchayet, and by section 15 the magistrate was authorized to levy arrears of assessment from the members of the punchayet. These two sections taken together appeared sufficient to enforce compliance with the provisions of section 22.

The HON'BLE ASHLEY EDEN said that it seemed to him that it would be expedient to authorize the chowkeedar to collect the rate: it would be a very unpleasant duty for a member of the punchayet to perform.

MR. THOMPSON said that the select committee had contemplated appointing the chowkeedar as the collecting officer, but it appeared to them that the power might be liable to abuse, and further that the chowkeydar would not always be a person able to read and write, and that he would therefore be unable to give receipts. On the other hand, a person appointed a member of the punchayet would be a person able to give receipts, and the committee thought it better to leave the punchayet at liberty to make their own arrangements for the collection of the rate.

The section was then agreed to.

On the motion of Mr. Schalch a verbal amendment was made in section 23.

Section 24 stood as follows:—

"If at the end of any year any surplus of the fund may remain unexpended, such surplus *may* be carried to the credit of the chowkeedaree fund for the ensuing year, and the amount to be raised by assessment in such ensuing year *shall* in such case be reduced by the amount of such surplus."

Mr. MONEY said that it appeared to him that the words "may" and "shall" were misplaced in this section. The surplus *should*, he thought, be carried to the credit of the fund, and it should be optional whether the assessment for the ensuing year should be reduced by the amount of the surplus. He therefore moved the transposition of the words "may" and "shall."

The motion was carried, and the section as amended was agreed to.

Section 25 was agreed to.

Section 26 was passed after an amendment regarding the publication of the list of defaulters, similar to that made in section 16 as to the mode of publication of the list of assessment.

Section 27 was as follows:—

"The collecting member of the punchayet shall thereupon issue a writing in the form in schedule (A) signed by him, authorizing the chowkeedar or such other person as may be therein named to levy, by the distraint and sale of a sufficient portion of the moveable property of such defaulters, the amount of their respective arrears, together with sums equal to such arrears respectively by way of penalty."

BABOO JOTEENDRO MOHUN TAGORE said that it did not appear clear from this section whether, besides the penalty, any further sum should be deducted for the costs of the distress. He believed it was understood in select committee that the costs of the distress should come out of the penalty; but he feared that if it was not clearly so stated the punchayet would deduct an additional sum for the costs of the distress. He therefore moved that the following words be added to the section:—"Provided that such penalty shall include all costs of distraint and sale."

MR. THOMPSON said he thought there was no necessity for the amendment, as it was quite clear that section 29 distinctly provided that the amount realized was to be applied to the discharge of the amount payable and the penalty, and that the surplus should go to the person whose property was sold. The costs therefore must go out of the penalty, and there seemed no necessity for the amendment.

THE PRESIDENT said he thought it was obvious that the words of the amendment were not necessary, because section 29 distinctly provided that the proceeds should be applied in discharge of the arrear and penalty and nothing more, and that the surplus must be returned to the owner of the property distrained.

BABOO JOTEENDRO MOHUN TAGORE said that as the administration of the law would be in the hands of those who were not supposed to know much of the construction of legal phraseology, it was better that the law should be explicit.

BABOO ISSUR CHUNDER GHOSAL said that the amendment appeared to him necessary. The procedure under the Act would be regulated by the rules for which provision was made in section 68, and perhaps some future Government might think that costs should be charged in addition to the penalty. He thought, therefore, that it would be better that there should be a provision in the law that no other costs besides the penalty should be charged to the defaulter.

The motion was negatived, and the section was agreed to.

Section 28 related to the manner of executing the distress; and provided that the time of sale should not be less than two, nor more than five days from the time of the proclamation thereof.

BABOO ISSUR CHUNDER GHOSAL thought that the time should be extended, and moved that the periods above given should be altered to five and seven days respectively.

MR. THOMPSON said, that considering the small amounts for which these sales would be held, and that the proceedings in regard to them would be generally known in the village, he thought that the extension of time proposed would afford an opportunity for evasion, and that it was better to get the sale over as soon as possible.

The amendment was by leave withdrawn, and the section was agreed to.

Section 29 was agreed to after a verbal amendment, and section 30 was also agreed to.

The further consideration of the Bill was postponed.

The council was adjourned to Saturday, the 14th instant.

Saturday, the 14th May 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*.

J. GRAHAM, ESQ., *Acting Advocate-General*,
THE HON'BLE ASHLEY EDEN,
A. MONEY, ESQ., C.B.,
A. R. THOMPSON, ESQ.,
V. H. SCHALCH, ESQ.,
BABOO UNOOCOOL CHUNDER MOOKERJEE,
„ ISSUR CHUNDER GHOSAUL,
„ CHUNDER MOHUN CHATTERJEE,
T. M. ROBINSON, ESQ.,
AND
BABOO JOTEENDRO MOHUN TAGORE.

COURT OF WARDS.

Before the motion for the passing of the Bill to consolidate and amend the law relating to the Court of Wards within the provinces under the control of the Lieutenant-Governor of Bengal was proceeded with, several amendments were, on the motion of MR. MONEY, made in section 23 of the Bill, and the section as amended stood as follows:—

"The collector may direct that any person having the unlawful custody, or being unlawfully in possession of the person of any minor ward, shall produce him or her before the collector on a day fixed by him, and may make such order for the temporary custody and protection of such minor as may appear proper.

In the event of disobedience to his orders under this section, the collector may impose a fine not exceeding five hundred rupees, and a daily fine not exceeding two hundred rupees, until the production of the person of the minor. In the case of a female minor ward she shall not be brought into court."

On the motion of MR. MONEY the Bill was then passed.

VILLAGE CHOWKEEDARS.

ON the motion of MR. RIVERS THOMPSON the council proceeded to the further consideration of the report of the select committee on the Bill for the appointment, dismissal, and maintenance of village chowkeedars.

Section 31 was agreed to.

Section 32 was agreed to with a verbal amendment.

Sections 33 and 34 were agreed to.

Section 35 was as follows:—

"The punchayet shall appoint the persons to be chowkeedars under this Act, and may, from time to time, with the sanction of the magistrate, dismiss any such chowkeedars."

BABOO JOTEENDRO MOHUN TAGORE said that this section would interfere with the authority which the punchayet ought to have over the chowkeedar. If it was known that the punchayet could not punish or dismiss the chowkeedar without the sanction of the magistrate, the chowkeedar would be remiss in the performance of his duty. When the chowkeedar was declared the servant of the community, the punchayet, who were the representatives of the community, ought to have the power of dismissing him; at least some weight ought to be attached to their unanimous voice in such matters. He (Baboo Joteendro Mohun Tagore) would therefore move the addition to the section of the following words:—

"Provided that if in any case the punchayet are unanimous in the dismissal of the chowkeedar, it shall not be necessary to obtain such sanction, but they shall report such dismissal to the magistrate for information."

MR. THOMPSON said the object the committee had in view in framing this section was, he thought, to prevent the abuse that might arise of such an important power as the dismissal of a village chowkeedar. We knew from experience that in nearly every village there were often two parties, and the influence of one party might affect injuriously the interests of the community. To prevent an abuse of this kind, the committee thought it would be better that the sanction of the magistrate should be obtained to the dismissal of a chowkeedar. If the punchayet were unanimous, the magistrate would not, except for very strong reasons, exercise the power conferred on him by this section. On the contrary, it was believed that the magistrate would exercise a sound discretion in the matter, and he (Mr. Thompson) would therefore oppose the amendment.

The motion was negatived, and the section agreed to.

On the motion of MR. EDEN the following section was substituted for section 36 as it stood in the Bill:—

"On the appointment of any chowkeedar the punchayet shall give to him a certificate signed by them of such his appointment, specifying therein the rate of salary at which he has been appointed; and he shall within seven days produce such certificate at the police station within the limits of which his village may be situate, and the officer in charge of such station shall cause the particulars of such certificate to be registered in a book to be kept in such station for the purpose of such registration, and shall report the same to the magistrate."

ection 37 was agreed to.

In section 38, on the motion of BABOO ISSUR CHUNDER GHOSAL, the maximum amount of fine to which a chowkeedar should be liable was altered from five rupees to one month's salary.

Section 39 related to the duties of chowkeedars.

After some formal amendments, "suspicious" deaths were, on the motion of MR. SCHALCH, added to the offences which a chowkeedar was required to report; and on the motion of MR. MONEY the magistrate was vested with a discretion to extend the period, from one week to a fortnight, within which the chowkeedar should present himself at a station which was more remote than two miles.

Sections 40 and 41 were passed after formal amendments.

Section 42 was agreed to.

Sections 43 and 44 were passed with slight amendments.

Section 45 provided how the chowkeedar's salary should be realized if not duly paid.

BABOO JOTEENDRO MOHUN TAGORE said that as the section stood there was nothing to prevent the magistrate from realizing the chowkeedar's salary from one member of the punchayet instead of from all the members in equal proportions. There appeared no reason why, when all were equally responsible, one member should be made to suffer. He (Baboo Joteendro Mohun Tagore) therefore moved the insertion of the words "in equal portions" after the word "pay" in line 8, and of the word "rateably" after "paid" in line 19.

MR. THOMPSON objected to the amendments. Considering the small amounts that would be realisable, there would be much difficulty of procedure if the magistrate were bound to recover the arrear from all the members of the punchayet rateably. The remedy was provided in the succeeding section, under which the member of the punchayet by whom the chowkeedar's salary was paid, or from whom it was realized, could reimburse himself from any surplus of the chowkeedaree fund that might remain at the end of the year. It appeared better therefore to leave the section as it stood.

The amendment was negatived, and the section was agreed to with a verbal amendment.

Sections 16 and 17 were agreed to.

Sections 18, 19, and 54, related to the appointment and duties of mundals in small villages.

MR. SCHALCH said as section 18 stood the zemindar had only to nominate a person to be the mundal of a village, whether such person was willing or not. The section might be made a means of gratifying feelings of revenge by the zemindar nominating a person against whom he had an ill-feeling: the zemindar would have fulfilled his duty by merely making a nomination, and would cease to be liable to any further call or punishment for neglect. He (Mr. Schalch) thought the section should provide that the zemindar should be bound not only to nominate a person, but to secure his consent to discharge the duties.

BABOO JOTEENDRO MOHUN TAGORE said he did not see that there was any provision to compel the person nominated to accept the appointment of mundul. Suppose a zemindar nominated a person whom he thought to be fit, and the person refused to give his services as a mundul in the manner contemplated by the present Bill, the zemindar would have no control over his actions. It was considered necessary to empower the magistrate to impose a fine on a person who refused to act as a member of the punchayet when so appointed; but what power had the zemindar to compel a man to act as a mundul against his wish? It would be almost impossible in many instances to induce any one to accept the responsibilities of the office, and the zemindar had no remedy for such refusal. It would therefore, he thought, be unfair and unjust to impose a fine on the zemindar for failing to do what in most cases would be beyond his power.

MR. MONEY said he believed that wherever such an institution as a village mundul existed, the office was always hereditary. In the Sonthal Pergunnahs the man was not called a mundul, but a manjee; and the appointment was not made by the zemindar, but by the village community. One of the weak points of the Bill appeared to him to be that it did not provide for the appointment of headmen in every village. In Madras, where a similar Act was lately passed, provision was made for the appointment of headmen in every village in which the office did not exist. He (Mr. Money) had sent a copy of this Bill to Mr. Robinson, the able and experienced head of the police in the Madras Presidency, asking him for his opinion. One of Mr. Robinson's notes was to the effect that in each village of the Madras Presidency there is a headman, generally hereditary; if there is not a hereditary one, then a headman is appointed: one of his duties is to command the village watch.

He (Mr. Money) was inclined to think that it would be more in accordance with the old institutions of the country and the feelings of the people that the mundul should not be nominated by the zemindar, but by the village community. He confessed there was a practi-

cal difficulty in the way of getting the opinion of the village communities; but if it was practicable, it was expedient that the headman should represent the wishes and feelings of the people, and it was more likely he would do so if appointed by the villagers than if appointed by the zemindar. He (Mr. Money) was not prepared at present to suggest an amendment on this section, but he would be glad if the section were allowed to stand over, not only as regards the question of the nomination of munduls in small villages where no punchayets were appointed, but also as to the question of appointing headmen in all villages where the punchayet system was introduced.

Baboo Issur Chunder Ghosal said there would be one great difficulty in carrying out the provision requiring the zemindar to appoint munduls. There were villages in which the zemindar had no control; where, in fact, he had sold his birthright for a consideration and reduced his estate to the rank of a putnee. In such villages this provision would be inoperative, because the zemindar had lost all control, and any arrangements he might make would not be accepted. He (Baboo Issur Chunder Ghosal) thought therefore that the suggestion which had been made by the hon'ble member who spoke last was worthy of consideration.

Baboo Jotteendro Mohun Tagore said that he was not aware what the practice was in the Sonthal Pergunnahs, but he believed the practice in the permanently-settled provinces was that the zemindar appointed the mundul. Besides there would be a difficulty in giving power to the ryots to make the appointment; there were party-feelings amongst the ryots, and it would be almost impossible to make them unite in making an appointment. It would, moreover, be taking from the zemindar a right possessed by him and sanctioned by long prescription. In many villages again, the zemindar makes an allowance to the mundul by way of remission of a portion of his rent for the performance of certain services, which, however, are not of a public nature, and the nomination necessarily rests with the zemindar.

Mr. Robinson said that the difficulty he felt had been explained by what fell from the hon'ble member opposite (Baboo Issur Chunder Ghosal), which he (Mr. Robinson) could confirm from the nature of the tenure under which he held property in Maldah. The zemindary belonged to eleven different persons, people of very small consideration, and the hon'ble member's remark was entirely correct that in such cases the provision would be inoperative.

Mr. Thompson said he had no objection to take into consideration the suggestions brought forward, and for that purpose would be glad that the further consideration of the sections should be postponed. The introduction of these sections by the select committee was with the object of providing for the report of crime in those small villages in which the punchayet system could not be introduced; and the opinion of the committee was that as in all such places the zemindar generally had some person to perform his own *maf* duties, it would be well if by the Bill he should be bound to nominate such person for the purpose of reporting crime to the police. It must be remembered that in these small villages no provision was made for the appointment and remuneration of chowkeedars, and the person who was appointed mundul would receive no fixed payment for the duty which it was proposed to assign to him. Any remuneration which he might consider himself entitled to would be a matter of arrangement between himself and the person who nominated him. If the nomination were made by the village community, it must be left to them to arrange for the remuneration of the mundul. Objections had been raised that if the nomination were made by the zemindar the mundul would be entirely subject to his influences; but considering the petty villages in which this arrangement would be introduced, he did not attach much weight to the objection. In his recent remarks further suggestions had been thrown out by the hon'ble member opposite, (Mr. Money), and he (Mr. Thompson) would not object to the postponement of the consideration of these sections.

The Hon'ble Ashley Eden said that the objection that had been first raised by the hon'ble member opposite (Baboo Jotendro Mohun Tagore) had practically been withdrawn, or at all events answered by the hon'ble gentleman himself. His objection was that it was not right to impose on the zemindar a responsibility for the appointment of a mundul, since the zemindar had no means of compelling a person to accept the office of mundul, and could not

therefore be reasonably expected to make such an appointment. But in his subsequent remarks the hon'ble member admitted that the zemindars actually did nominate village munduls for their own purposes at the present time, and that they found no difficulty in persuading those persons to perform the duties required of them by the zemindar. Now if they found no difficulty in procuring the assistance of such men for their own purposes, they could not plead the impossibility of providing the services of men for the purposes of the public under the Bill. The same man could act in both cases.

As regards the objection made by the hon'ble gentleman (Mr. Robinson) in respect of putneedars, there was no doubt an apparent difficulty; but in fact a putneedar was by the very nature of his tenure bound to take upon himself those duties of the zemindar, and would relieve him of all the responsibility imposed upon him in respect to the village police. It was the uniform condition of every deed under which a putnee was held that the putneedar took upon himself all legal duties imposed on the zemindar.

As regards the question of the nomination of munduls in every village, he thought that this might be effected by making one of the members of the punchayet President of the punchayet in each village. This might be done by an alteration in section 3: it was no doubt desirable that there should be some one headman in each village.

Baboo Jotendro Mohun Tagore said he feared he had been somewhat misunderstood, and he therefore deemed it necessary to explain further what he had previously said. The mundul was appointed by the zemindar for the performance of *mal* duties, and he might refuse to perform duties of a public nature which carried with them certain heavy responsibilities. The zemindar might try and persuade, but he had no means of compelling the mundul to perform these additional duties. In the one case he was paid for his services by the remission of a certain portion of rent; in the other his services would be gratuitous. Now if the zemindar failed to persuade the mundul to undertake these public duties, he (the zemindar) would be punished under this section by a fine extending to Rs. 100. He Baboo Jotendro Mohun Tagore) would certainly question the justice of imposing such a penalty.

Baboo Issur Chunder Ghosal said that the position of the zemindar was not always the same. In some villages he had a power of control, *i.e.*, in those which were still under his khas management; but in those which had been reduced to the rank of a putnee he had none, and in such villages the duties imposed by this Bill on zemindars would be devolved on the undertenants to whom the zemindar had transferred his rights.

With regard to the remarks of the hon'ble member on his right (Mr. Eden), that all the duties imposed on zemindars were transferred by law to the putneedars to whom their lands were leased, that was no doubt correct. But these were new duties for which provision was about to be made, and he (Baboo Issur Chunder Ghosal) did not see how the old regulations could be brought to bear on the present question. He thought that the person immediately in receipt of the rent of the land should be required to nominate the mundul, or that the duty should be imposed on the inhabitants of the village.

The further consideration of sections 18, 19, and 50 was then postponed.

Section 51 provided for the assignment to the zemindar of chowkeedaree chakran lands.

Mr. Thompson moved the insertion of the words "chowkeedaree chakran" before "land" in line 5. In doing so he said that the consideration of this portion of the bill had occupied a good deal of the attention of the select committee, and he was afraid that after all, from the inherent difficulties of the subject, the sections connected with this second part of the bill were not as complete and perfect as they might be. The difficulties arose from the following considerations. Notwithstanding the detailed inquiries which had been made in connection with the subject, the information regarding chowkeedaree chakran lands was still very imperfect. Thus it was found that the conditions which obtained in one place did not apply to other districts, or to different parts of the same district. The tenures differed so much in various places, that no definite rules or sections which would be applicable to one would be applicable to another; and he thought it would be found that a great deal would have to be done by the agency of the commission to be appointed by the Lieutenant-Governor under the

provisions of the Bill, and that all the council could do in the sections which applied to chakran lands was to lay down general rules and principles for the guidance of the commission capable of being adapted to the circumstances of any place or district where such lands prevailed. The object of his introducing in this place the words "chowkeedaree chakran" was this. The definition in section 1 of the term "chowkeedaree chakran lands" was in its present form very imperfect: it was declared to mean "lands assigned for the maintenance of the chowkeedar of any village." Now the general idea of chowkeedaree chakran land had come to be land assigned for the maintenance of the chowkeedar, for which he had to perform police duties, and also to render certain personal services for the benefit of the zemindar or the estate. The question, as the council were aware, had been the subject of prolonged litigation, and in the famous case of Joykissen Mookerjee against the Government, in connection with chakran lands in the Burdwan district, it was ascertained that the parties to the suit asserted claims which were in excess of what each was entitled to. On the side of the zemindar it was contended that the tenure on which chowkeedaree chakran lands were held was solely in return for the performance of certain personal services to be given to the zemindar; and on behalf of Government it was maintained that such lands were held simply for the performance of police duties, for which object solely they had been originally assigned. After much litigation in this country the case was taken in appeal to the Privy Council, which gave a decision in consonance, he was bound to say, with law and custom, but which, as a compromise between the parties, had given little satisfaction, as it left the chowkeedar under the double allegiance of a servant to the Government and to the landed proprietor of the estate in which the land was situated; for the Privy Council had decided that the views held by both sides were in excess of their respective rights, and that the village chowkeedar in such a position was not only bound to do service as a police officer, but also, from the incidents of his tenure as established by long usage, was to some extent a servant of the zemindar. In this double capacity he still existed in most districts, and that was the general idea of the status of a chowkeedar holding chowkeedaree chakran land.

The committee had, however, ascertained that in some places this description of a chowkeedar's position would not apply. For instance, in Madapolie Mr. McNeile had shown that pykes were divided into three classes,—those established before the permanent settlement paying a small quit-rent to the zemindar, and rendering him certain trifling services; pykes established subsequently to the permanent settlement, who paid a quit-rent and performed such services as well as certain police duties; and pykes who did not pay any quit rent or perform personal services of any kind, and yet held the land in return for the performance of police duties. It was clear therefore that where the chowkeedar paid no quit-rent, and owed no allegiance to the zemindar, the definition given in the Bill as it stood would not apply; and as far as the section under consideration went, the transfer of land in such cases to the zemindar would be an absolute gift without consideration. If there were such cases as chowkeedars who were not bound to serve the zemindar, he would not be entitled to any portion of the assessment which the village punchayet made on the land so held, and therefore it would be necessary to define as concisely as possible what the meaning of chowkeedaree chakran land was, and the discussion would properly arise on the consideration of the interpretation clause referring to that point.

The motion was carried, and the section as amended was agreed to.

Section 52 provided that the assessment on the land so transferred should be fixed at one-third of the annual value of the land.

Mr. Thompson said that there were two points in this section which required the consideration of the council: the first was the rate of assessment; and secondly, the assessing agency. He was one of the committee who had originally signed the report which recommended that the rate of assessment should be fixed at one-third of the annual value of the land, but he believed he had at the time remonstrated against this excessive liberality towards the zemindar, and in the discussions which had since taken place, he had always intimated his intention of moving an amendment to this part of the Bill. He had never understood on what grounds so large a portion as two-thirds of the assessment imposed upon the chow-

keedaree lands should be transferred to the zemindar. It had, he believed, been held by a decision of the High Court, in a case connected with lands of this description, that the private services which a zemindar could claim from a chowkeedar in the occupation of such lands were of such a nominal character, that in one instance the court could not estimate its value. Now there could be no question that that was the only ground on which the council was asked to transfer any portion of the assessment upon such lands to the zemindar of the estate in which they were situated. Whatever might have been the original constitution of all such lands assigned for police purposes, experience had shown that the zemindar was clearly only entitled to services of a very trivial character from the occupant, viz. such services as carrying his letters, conveying messages to his agents, and duties involving no heavy responsibilities. It had been certainly settled that the zemindar could neither resume the land so held, nor enhance the rent upon it; and beyond the occasional services which he might claim from the possessor, the zemindar had no other interest in the matter. For the surrender of this very nominal right it has been proposed to give to the zemindar two-thirds of the assessment fixed upon these lands. Now if the case was one between the Government and the zemindar, as to who should secure the profits from such lands, the latter might, with better reason, have claimed the larger share; but, considering that by this transfer the Government directly gained nothing beyond the general benefits consequent upon the improved status of the chowkeedar, it seemed to him (Mr Thompson) that this large concession to the zemindar was uncalled for. Indeed, from all the circumstances of the case, the smallness of the holdings, and the inconsiderable service which the zemindar could in any case claim, it would have been no great sacrifice if the zemindar had foregone all demand for compensation, and allowed the entire assessment to pass to the benefit of the village police fund. It would have been of material assistance and advantage to the village communities. It had been insisted, however, that the zemindar could fairly take some compensation, and accordingly provision was made for it, though he would press the amendment that "one-half" should be substituted for "one-third" in line 2 of the section.

Baboo Issur Chunder Ghosal would say a few words with reference to the remarks which had just been made with regard to the position taken by zemindars on this question. It was certainly not owing to the money value of the land that they made their claim: it was merely, as he understood it as a protest against the treatment they were in the habit of receiving from the mofussil authorities. It was an index of their feelings against those officers—the instrument of the weak against the strong—put forth in the hope that it might attract the attention of the Government and lead to an enquiry and amelioration. He thought if the weak and the ignorant were treated in a conciliatory and friendly spirit, which such people always expected from the strong and the enlightened, (but not treating them merely as grown up boys, for that jarred with their self-respect,) the services of the landholders might be greatly utilized by the Government. He (Baboo Issur Chunder Ghosal) thought that the good old days would soon return, and the governors and the governed would view the interest of the country by a light common to both. He would, however, do justice to the mofussil authorities, and say that there were bright exceptions, and had it been otherwise, the country certainly would not have made the progress it had done. But he hoped and expected a greater unity of thought, feeling, and action between them in time to come.

The motion was carried, and the section as amended was agreed to.

Section 53 provided that the assessment of chakran lands should be subject to the approval of the collector.

Baboo Jotendro Mohun Tagore said that it would be to the interest of the punchayet to over-assess these lands, and it was but fair to the zemindar that he should be allowed an opportunity of contesting the assessment. He therefore moved that the words "provided that it shall be lawful for the zemindar to contest the assessment before it is so approved" be inserted after the word "same" in line 6.

Mr. Thompson said he did not think the amendment necessary: the collector would always be willing to hear any objection the zemindar might have to the assessment made by the punchayet. The amendment, it appeared to him, would only open the door to delays.

Mr. Robinson thought it was quite reasonable that there should be a provision in the law that the zemindar should have a right to be heard, and it could very easily be settled that the zemindar should object within a stipulated time. It was possibly true that no collector would refuse to hear the zemindar if he applied to be heard; but he (Mr. Robinson) thought the zemindar should have a right to be heard if he applied within a certain time.

The motion was carried, and the section as amended was agreed to.

Section 54 was agreed to with a slight amendment.

On the motion of Mr. Thompson the postponed section 7 was omitted, and the further consideration of the Bill was postponed.

The council was adjourned to Saturday, the 21st instant.

Saturday, the 21st May 1870.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*.

J. Graham, Esq., *Acting Advocate-General*,
The Hon'ble Ashley Eden,
A. Money, Esq., C.B.,
A. R. Thompson, Esq.,
V. H. Schalch, Esq.,
Baboo Unocool Chunder Mookerjee,
Baboo Issur Chunder Ghosal,
Baboo Chunder Mohun Chatterjee,
F. F. Wyman, Esq.,

and

Baboo Joteendro Mohun Tagore.

PENDING SUITS.

Mr. Money moved for leave to bring in a Bill to transfer certain pending suits to the civil courts. He said that the necessity for the introduction of this Bill, which he had the honor to introduce for the consideration of the council, arose from the unforeseen operation in one direction of Act VIII. of 1869 passed by this council. When that Act, which transferred the venue of certain suits from the revenue to the civil courts, was passed, it was supposed that no more than the average number of suits would be pending in the revenue courts of each district on the date the Act came into operation. It was omitted to make allowance for the operation on the one hand of the temptation existing in the cheaper procedure by means of revenue agents, as compared with the more expensive agency of vakeels, and on the other hand for the natural desire on the part of the revenue agents to continue as long as possible the system under which they got their livelihood, and which would no longer be in operation. After the Bill was passed the Government appointed fifteen moonsiffs, and it was in contemplation to appoint a still greater number: on the other hand the establishment of deputy collectors was and is being steadily diminished. We had therefore on the one hand a new machinery introduced for the trial of these suits, and on the other there was the gradual decrease in the strength of the revenue courts. It had been reported that during the few days preceding the date on which the Act came into operation a large number of rent suits had been instituted in the courts of the sub-divisional officers in some districts. Statements had not been received from all the divisions; but so far as information had been received it would be laid before the council with the view of showing the extent to which suits had lately been instituted. In the division of Burdwan it was found that the number of suits of this kind pending on the 13th of April, the date on which the new Act came into operation, was 3,734, and the number of applications for execution of decrees was 1,173. From the Chittagong division information was received by telegram and without distinction drawn between suits and applications for execution of decrees, the number of both together being 8,247. In the Dacca division the number of suits was 7,185, and of applications for execution of decrees 1,986. In the three districts of the Presidency division the number of suits

was 8,165, and of applications for execution of decrees 1,546. These figures should suffice to show the council that a remedy for this state of things was called for. The revenue courts in many districts found themselves burthened with a larger amount of rent-suit work than usual; while, on the other hand, the new machinery established to grind this particular kind of judicial corn would have little or no corn given it to grind.

What first brought the matter prominently to the notice of the authorities were the arrangements it was thought desirable to make with regard to the assessment and collection of the income tax. At a late conference at the Board of Revenue which the several commissioners of divisions attended, the question was discussed as to the best means of working the income tax, and it was decided that the sub-divisional officers should be employed for the purpose to as large an extent as practicable. It was considered that their local knowledge and their superior social position and education, as compared generally with the class of men from whom the Government had been able to appoint special assessors, would enable the sub-divisional officers to make the assessment with more discrimination and judgment, with less inequality of assessment, and less of the monstrous injustice and gross oppression which had attended the working of every scheme of direct taxation in this country. But before the agency of the sub-divisional officers could be used for the assessment and collection of the income tax, it was necessary that they should be freed from an amount of work which it never had been intended or expected that they should perform. The commissioners generally stated that in those sub-divisions in which the larger number of rent-suits were pending, it would practically be impossible for the sub-divisional officers to attend also to the assessment and collection of the income tax. He (Mr. Money) hoped that the council would consider, as he did, that it was a matter of great importance that this tax should not only be better worked in the interests of the people, but that it should also be worked with greater economy and gain to the Government and the public, as would be the case if sub-divisional officers were employed. With this object, and with the view of putting an end to the anomalous state of things under which two different classes of courts tried the same class of suits, he proposed this measure for the favorable consideration of the council.

Mr. Money had omitted to remark on one or two of the general principles adopted in the framing of the Bill. The object kept in view has been, while affording relief to the sub-divisional officers and collectors, to prevent, as far as possible, hardship being suffered by those who had suits before such courts. The cases before the revenue courts might be divided into three classes—first, suits proper; second, applications for the execution of decrees; and third, miscellaneous applications. It was only proposed to transfer the first two classes of cases, and to keep miscellaneous applications to be disposed of by the courts to whom such applications had been made. These comprised matters of an executive nature, such as applications for the deposit of rent, for the ejectment of tenants, for the measurement of lands, and the like, which latter was work which, even under the new procedure of Act VIII. of 1869, was to be done by collectors. It was thought advisable to leave to the revenue courts the disposal of applications of this nature which had already been made, and merely to transfer to the civil courts the disposal of suits and applications for the execution of decrees.

Baboo Jotendro Mohun Tagore said that he had only two remarks to make with reference to the observations that had fallen from the hon'ble member. The very fact that so many suits had been instituted shewed what the state of public feeling was with regard to the new procedure under which rent-suits were now to be tried, and how they still clung to the old procedure in preference to the new one. That they did so was a matter of no surprise if we considered the additional expense of a trial in the civil courts, where the suitors would be deprived of the cheaper procedure by means of mookhtears and be compelled to employ the more expensive agency of pleaders; and this was strong evidence why certain sections of the Civil Procedure Code should be modified so as to allow mookhtears to appear before moonsiffs' courts in rent-suits, with the view of bringing down the scale of expenditure in the conduct of such suits to what it was under Act X. of 1859.

Mr. Rivers Thompson said that as he was the member of the council in charge of the Bill which was subsequently passed as Act VIII of 1869, and transferred the trial of rent-suits from the revenue to the civil courts, he thought it right to explain the circumstances under which a section for the transfer of pending suits was not included in the Act. It was the subject of some discussion both in the full council and in select committee whether provision should not be made for such a transfer; and it was eventually resolved, considering the number of suits of different descriptions which would be pending in the revenue courts, and the different stages in which they would be found, that it would be preferable to leave them to the disposal of the courts in which they were instituted. It was unfortunate that the hon'ble member who had just spoken was not a member of the council when Act VIII. of 1869 was under consideration. If he had been, he would have known that both this point and others to which he had adverted had received full consideration at the hands of the council at the time. He (Mr. Thompson) must take exception to the hon'ble member's remark that the general unpopularity of the transfer of these suits to the civil courts was the main cause of the demonstration which had led to the recent institution of so large a number of suits and applications at the present time. Such an opinion was certainly opposed to the statements and reports made while Act VIII. of 1869 was under discussion; and it was fully considered during the progress of that Bill that though in the first instance there might be some additional expense involved in the trial of rent suits in the civil court, yet having regard to the improved machinery for the adjudication of such suits, and the greater leisure of the officers to whom they would be transferred for trial, there would certainly be more celerity in their decision, and consequently a large advantage over the then existing system in effecting the transfer, and that these results might eventually be attended in the end with a saving of expense.

The hon'ble member opposite (Mr. Money) had fully explained the reasons which had led to the movement which made the present Bill necessary. It was caused by the mookhtears and revenue agents, who being deprived by the Act of last session of the privilege of pleading in rent-suits as before, had promoted a large number of institutions in the collectors' courts with the view of securing to themselves as long as possible the means of livelihood. That, too, was a point which had not escaped the attention of the council, but which could not be avoided. There were circumstances which prevented this council from enabling mookhtears to plead in the civil courts, because the law which prohibited mookhtears from pleading in the civil courts was a law passed by the council of the Governor General subsequent to the passing of the Indian Councils' Act, and it could not therefore be altered by any law passed by this council. It might be a subject of regret that a remedy was not available which would allow mookhtears and revenue agents to continue their practice in the moonsiffs' courts, and the desire on their part to retain in their hands a larger number of suits than would have been instituted in the ordinary course might be a legitimate one; but the consequences, as explained by the hon'ble mover of the Bill, were so serious that there was sufficient justification for the introduction of the present measure.

Baboo Issur Chunder Ghosal said that with reference to the remarks made by the hon'ble members who preceded him, he thought it his duty to state that in the matter of the mookhtears both this council as well as the Government of Bengal did all they could with a view to reduce the cost of rent-suits by empowering the mookhtears to plead in these matters before the civil courts. But it was of no avail, as the Government of India set its face against the proposition. The effect of the present law would therefore be most oppressive to the poor ryots, as in all such cases they are generally the losers. The rents must be paid, and the costs therefore could not be set aside.

With regard to the remark that in the institution of such a large number of cases the zemindars had been led away by their mookhtears, he would say that the zemindars were perfectly awake to their own interests, and needed not the promptings of their law agents in such simple matters. It was in difficult and intricate cases that these agents sometimes took advantage of their position, but that was not a peculiarity of Bengal alone.

The motion was agreed to, and the Bill was read in council.

The council then proceeded to the settlement of the clauses of the Bill.

Section 1 was agreed to with a verbal amendment.

Section 2 provided that all suits in which no witness had been *examined*, should be transferred to the civil courts.

MR. MONEY said that if a witness had been summoned, though not examined, great hardship would ensue to the witness if the suit were transferred, as the witness would be put to additional trouble and expense in attending again before the civil court. He (Mr. Money) therefore moved that the word "summoned" should be substituted for "examined." The motion was carried, and the section as amended was agreed to.

Section 3 provided for the transfer of decrees in which an order for attachment had not issued at the time of the commencement of this Act.

THE ACTING ADVOCATE-GENERAL said he thought the section should provide clearly that, in those cases in which summons had issued, the proceedings should be transferred to the civil court after the making of the decree.

After some conversation, an amendment to that effect was carried on the motion of MR. MONEY, and the section was passed with some further amendments of an unimportant character.

Sections 4 to 7 were agreed to with several unimportant amendments made on the motion of MR. MONEY.

On the motion of MR. MONEY the following section was added to the Bill:—

"This Act shall commence and take effect upon the first day of June 1870."

The preamble and title were agreed to, and on the motion of MR. MONEY the Bill was passed.

VILLAGE CHOWKEEDARS.

MR. RIVERS THOMPSON moved that the report of the select committee on the Bill to provide for the appointment, dismissal, and maintenance of village chowkeedars, be further considered in order to the settlement of the clauses of the Bill.

MR. MONEY said that before the council proceeded to the further consideration of the clauses of the Bill, he wished to say a few words with reference to a paper lately circulated among the members of the council in connection with this Bill. The paper he referred to was a letter from the commissioner of Burdwan, in which he strongly condemns not only the details of the Bill, but the principle on which it is based. Mr. Buckland, in support of his views, had adduced the testimony of Sir Frederick Halliday, and certainly at first sight a minute written by that gentleman in 1838 seemed to warrant Mr. Buckland in claiming for his view of the question the opinion of Sir Frederick Halliday. The reason that he (Mr. Money) referred to this matter was because he used to entertain on this subject the same views as are now entertained by the commissioner of Burdwan; and five or six years ago, when commissioner of Bhaugulpore, he submitted a report to the Government in which he advocated the abolition of village chowkeedars and the substitution in their stead of stipendiary police. He had since found reason to change his opinion, and, with the proverbial zeal of a convert, he was unwilling that the principle which the council had accepted in this Bill should have arrayed against it the adverse opinion of such an authority as Sir Frederick Halliday, or that the council should suppose that, even when the minute of 1838 was written, the balance of valuable testimony was on that side.

In 1838 a committee was appointed to enquire into the question of the police and criminal administration of Bengal, and to that committee the following gentlemen were appointed:—Messrs. W. W. Bird, F. C. Smith, F. J. Halliday, T. Lowis, T. R. Hutchinson, and W. Braddon. These gentlemen were all men of ability and experience, selected as the most likely men to be of benefit to the Government in the consideration of the subject which they were appointed to investigate. Out of the whole body of gentlemen who formed that committee and submitted a report, only two, Messrs. Halliday and Lowis, dissented. The opinion of the others was all in the direction of the retention of the village chowkeedaree system, in opposition to the opinion entertained by the two dissenting members, who recommended the substitution of a body of stipendiary police. The following extracts from the report of the com-

mittee show the opinion that the majority of the committee at that time entertained with regard to this question. Paragraphs 54 and 55 of the report say:—

"We cannot refrain from quoting here the observations upon this subject of Mr. Lowis, contained in his letter of the 2nd May 1837. 'By far the greatest impediment to the success of police operations in this country arises from the total want of co-operation on the part of the people. Exaction on the one hand, and fear, ignorance, and prejudice on the other, have drawn a very marked line between the regular police officer and the public, for whose benefit he is ostensibly employed; and whatever the crime may be, or however notorious and dangerous the offender, the village community rarely shows any disposition to assist either in tracing the one or in apprehending the other. Their sole object being to get rid as speedily as possible of their unwelcome visitors by any story most likely to effect their purpose. But in the character and disposition of the village chowkeedar there is something common to both parties. When properly treated he can give, and he frequently does give, most valuable information; and it has therefore always appeared to me a most desirable object to make this connecting link between the police and people as sound and serviceable as possible.' We doubt much if any description of village police can be efficient, we are quite sure that none can be popular, which is not based on the principle advocated by Mr. Lowis in the above extract."

The council would observe that the majority of the able men who formed the committee were in favor of the retention of the chowkeedar, thereby following the same principle as had been accepted by the council in the Bill before them. Mr. Buckland might probably urge that one opinion was often worth a dozen, and that the opinion of Sir Frederick Halliday ought to override on such a subject the opinion of the majority of his colleagues. He (Mr. Money) would admit this to some extent, and the more readily, because the phases of opinion through which Sir Frederick Halliday's mind passed with reference to this subject were exactly those which had marked his own course of thought. But Mr. Buckland, in appealing to the minute written by Sir Frederick Halliday, had omitted to notice any further or subsequent expression of opinion given by that gentleman. Eighteen years after the preparation of the minute referred to, in 1856, when Sir Frederick Halliday was Lieutenant-Governor of Bengal, with the advantage of a longer experience and maturer judgment, he wrote another minute on crime and police, and the administration of the criminal law in Bengal. He (Mr. Money) there found the following remarks:—

"Yet miserably impaired as the institution of the village police has become, it is still true that no police can be effective without their help, and that, as stated in the minute of Lord Hastings, dated 2nd October 1815, 'it is from the chowkeedars that all information of the character of individuals, of the haunts and intentions of robbers, and of every thing necessary to forward the objects of police, must ordinarily be obtained. They are the watch and patrol to which the community looks for its immediate protection, and on the occurrence of a crime, the daroguh's only mode of proceeding is to collect the watchmen of all neighbouring villages, and to question them as to all the circumstances, with a view to get from them that information which they only can afford. The village chowkeedars are, in short, the foundation of all possible police in this country, and upon their renovation, improvement, and stability, depends the ultimate success of all our measures for the benefit of the country in the prevention, detection, and punishment of crime.'"

Then in paragraph 39 would be found the following:—

"What is, however, necessary to secure the old institution of a village watch from falling into utter desuetude, and for keeping it in a state of vigour sufficient for our present purposes, but doubtless to be further improved and reformed hereafter, is a law which shall enable a magistrate on finding a village without a chowkeedar, or a chowkeedar without wages, to make a summary enquiry, and according to the nature of the case, either to cause the nomination of a fit chowkeedar by the person or persons to whom the nomination may be proved by custom and usage to belong, or to cause payment of his wages at the rate found customary by the person or persons on whom the customary liability to pay such wages may be found to fall."

Again, in paragraph 40 Sir Frederick Halliday said:—

"It has been objected by some very competent advisers on such subjects that even when all this shall have been done we shall be as far as ever from our object; that the village chowkeedars at the best are an untrustworthy, unorganized rabble; and that no real improvement will be effected unless we get rid of them altogether, and organize a rural police according to the newest forms of occidental civilization. And it is common with those who advocate this method of reform to point to the 34 or 36 millions of the population, and to urge how easily a sum might be raised from them, not greater than they now pay for their imperfect village watchmen, which, in the hands of a skilful organizer, might be made to provide for the establishment in each zillah of a well-paid, dressed, and disciplined force, inferior in numbers to the present rural police, but far superior in trustworthiness and efficiency. To some such plan as this I have

myself leaned in earlier days; nor do I doubt either that if it were practicable it would provide a vastly improved rural police, or that we may fairly look forward to such an improvement hereafter, though as yet at a great distance. I am satisfied, however, that to press for such a measure now would be impolitic and unwise, and that we might lose all in our anxiety to attain a desirable end sooner than can be reasonably expected. We must do our utmost to carry the people with us in our police reforms. At present they will readily admit their old established obligation to maintain village watchmen in a certain customary proportion to the size of each village, and to pay them after a certain usage which may differ somewhat in different villages, but has long been accommodated to old habits and customs in all. They will not, however, regard with favor a distinct and precise taxation for a new police, the application of which they doubt, and the object of which they will be very likely to misunderstand."

He (Mr. Money) thought these extracts showed very conclusively that Sir Frederick Halliday, eighteen years after the minute referred to by Mr. Buckland, so far from supporting the principle advocated by that gentleman, had lent the great weight of his authority to the principle accepted by the council in the present Bill; and the honorable mover of this Bill might, with very much more justice than the commissioner of Burdwan, quote Sir Frederick Halliday as a witness in favor of the course he had adopted.

But Mr. Money would also adduce in favor of the principle of the Bill the testimony of another officer, which to his mind carried greater weight, and was of more authority in a question of this kind than the opinion of Sir Frederick Halliday. He referred to Mr. Robinson, late Inspector-General of Police in the Madras Presidency. That gentleman was undoubtedly on all questions of police the first authority in India. By his ability, his untiring energy, and thorough knowledge of the subject, he had made the police of the Madras Presidency a model and an example to that of all others. He had done what it falls to the lot of few men in this country ever to do;—he had initiated and carried out successfully a large and comprehensive measure of administrative reform. When the present Bill was first published, Mr. Money had, as he told the council last Saturday, sent a copy of it to Mr. Robinson, and asked him to state what he thought of it. Mr. Robinson's answer was as follows:—

"I like your Bill on the whole very much. Only municipalize more and cut off meddling Peelers and magistrates more than you do, and trust your people. They are more interested in the safety of themselves and property than we are—we don't like to believe this I know—and can provide for it far better as respects village interests than we can. But we must take them in some measure in their own way."

Mr. Robinson then referring to a Town and Village Municipal Act, recommended by him some five or six years ago, said——

"You will see that in principle we are at one on the whole. I would go further now than then. I am older and I believe wiser in my appreciation of the people and their excellent institutions."

The remarks made by Mr. Robinson were more applicable to the Bill as it was introduced than to the Bill as it now stood. The select committee had amended it in the direction recommended by Mr. Robinson. They had given more freedom of action to the punchayet, and had curtailed the power of interference on the part of the magistrate and the police. In fact the interference of the police had been set aside altogether. With the municipal Bill for the Madras Presidency, which he (Mr. Money) had referred to above, Mr. Robinson had sent up a letter to his own Government, parts of which appeared so applicable to the state of things in Bengal, that he (Mr. Money) would read an extract or two to the council, if they were not tired of the subject:—

"In towns we have to create municipal action. In villages it has existed from time immemorial, especially as regards their domestic police. We only want the means of making it active, for I am inclined to ascribe the present unsatisfactory condition of the village services to faults of our own legislation, rather than to absence of municipal feeling in the country. The village system with its institutions has existed from time immemorial in every part of this presidency save Malabar, and the people are still deeply imbued with the feelings of municipal management and community of village interests.

"The villagers did at one time maintain their village services in some degree of vigor and respectability; so much so that our early administrators saw reason for endeavouring to strengthen and comfort the village system and its services. So strong indeed was the feeling that the villagers might and should be entrusted with the control and management of their own servants, that no legislative provision was made for the prompt recovery of their remuneration. On the principle that, if the villagers were well served, they would pay their servants as they had done from time immemorial, it was deemed inexpedient to take any step that should weaken the power of the villagers in controlling the servants they paid.

"But the law, as from time to time enacted, has interfered with the free action and growth of this municipal feeling, and has centralized the management of all village services in the powerless hands of Government officials. This departure from sound principle has unavoidably resulted in bad administration, and the people have withdrawn their interests and support.

'The present miserable, wasted, and dilapidated condition of these once stalwart and respected institutions tells the tale of years of a distrusting and centralizing policy."

Any one who knew the difference between the existing condition of village institutions in Bengal and in Madras would perceive that these remarks applied with even greater force to Bengal than to Madras. He (Mr. Money) entirely concurred in the observations and conclusions of Mr. Robinson. He believed that one of the chief and most valuable characteristics of the Bill before the council was that it recognised the worth of an old institution belonging to the country. It was an attempt to improve what exists, instead of substituting for it something new, and therefore distasteful to the people. He (Mr. Money) was of opinion that we are all too prone to think that there is no progress and no reform except in measures in consonance with English ideas and thought, and consequently with an English state of society. He believed on the contrary, and the older he grew the more he believed it, that the closer we identify ourselves with the general feeling of the people, and the more we bring our measures for their good into harmony with their own institutions, with their mode of life, their habits and their thoughts, the more likely we are to achieve success. It was because this Bill appeared to him to be a step in that direction, and to fulfil those conditions, that he gave it his cordial support.

Section 55 provided that the assessment made on chowkeedaree chakran lands should be payable "yearly in advance."

Baboo Jotteendro Mohun Tagore said that the amount of annual assessment on these lands would necessarily be large, and if the whole were required to be paid at once, the zemindar might find it very inconvenient to do so. He thought it would conduce to the convenience of the proprietor, without interfering with the efficiency of the chowkeedaree fund, if the assessment were paid quarterly instead of yearly. He therefore moved an amendment to that effect.

Mr. Thompson said he would have been glad if the hon'ble member had given notice of this amendment. In the belief that these chakran lands were of small extent, the committee had thought it advisable to require the payment to be made yearly in advance, so as to secure its early payment for the purposes of the Bill. The arrangement on which the Bill was drawn would also prevent the great inconvenience, trouble, and expense involved in the collection of quarterly payments, and, in default of payment, the holding of quarterly sales. It was in this view that the select committee had provided for yearly payments; and he thought the provision ought to be retained.

The motion was negatived, and the section was agreed to with a verbal amendment.

On the motion of Mr. Thompson the following sections were substituted for sections 56 and 57 :—

"LVI.—Every such assessment shall be deemed to be a demand to be realized in the same way as an arrear of revenue."

"LVII.—Whenever such assessment shall be in arrear for the space of fifteen days after it shall have become payable, the collecting member of the punchayet shall forward to the collector of the district, in which the land so assessed is situate, notice of the amount of such arrear in the form in schedule D annexed to this Act."

On the motion of Mr. Thompson the following section was introduced after the above :—

"LVIIA.—Immediately after the receipt of the said notice, the collector or other officer authorized to hold sales under the law for the time being in force, for regulating sales of land for arrears of revenue, shall proceed, without any preliminary notice for payment, to issue a notification for sale under section 6 of Act XI. of 1859, and unless the arrears be paid within the time mentioned in such notification, shall sell such land according to the provisions of such law, as if such land were an estate within the meaning of Act VII. of 1868, passed by the Lieutenant-Governor of Bengal in Council; and all the provisions of the law for the time being in force with respect to the sale of such estates shall apply to the sale of such land, and every such sale shall have such and the same force and effect as if the same were a sale of an estate for arrears of its own revenue, and such land shall be held by the purchaser thereof sub-

ject to such assessment, but freed from all other charges and incumbrances save those to which he would have been liable if the said land had been an estate sold for arrears of its own revenue."

Section 58 stood as follows:—

"LVIII.—Such collector shall, out of the produce of such sale, after defraying the costs of and attending such sale, pay to the collecting member of the punchayet, after the expiration of one month from the day of such sale, the amount due for arrears of such assessment, and pay the balance of such produce to the person to whom such land shall have been so transferred, his heirs or assigns, to be by him, in case he be not the person entitled to such land subject to such assessment, paid to the person so entitled."

A verbal amendment was made on the motion of Mr. Thompson, and after some conversation the further consideration of the section was postponed.

On the motion of Mr. Thompson section 59 was struck out.

Section 60 was as follows:—

"LX.—When any lands shall have been transferred to any zemindar under the provisions hereinbefore contained, the right to the performance of any services to any person by the occupier of such lands in respect of his occupation thereof shall wholly cease and determine."

Mr. Wyman said that this section appeared to abrogate the right on the part of the zemindar to the services of the chowkeedar; but he understood that under certain tenures the zemindar was entitled to a quit-rent in lieu of service. He wished to be informed if any provision was to be made for such cases.

Baboo Issur Chunder Ghosal said that there might be some tenures in which a quit-rent was paid in lieu of service, and he thought provision should be made for such cases.

Mr. Schalch said that in Midnapore in some of the tenures a sort of *peshkush* or quit-rent was paid. Supposing that such tenures are to come under the operation of the law, that would be a matter for consideration when the definition clauses came before the council. He presumed, however, that the quit-rent would be merged in the half assessment of the land which would be transferred to the zemindar. The section under consideration merely related to the right to service, and he (Mr. Schalch) did not think that any saving of the right to service would save the quit-rent.

Mr. Thompson said that it was certainly the intention of the Bill that if the land were transferred to the zemindar, the quit-rent, if he received any, should merge in the remission made of half the assessment. If that was not quite clear some alteration would be required. He (Mr. Thompson) did not think that by the section before the council the right to quit-rent was abrogated.

Mr. Wyman said that if the principle for which he was contending was admitted, there would be no necessity for altering this section.

The section was then agreed to with a verbal amendment.

On the motion of Mr. Thompson section 61 was struck out.

Section 62 was agreed to.

Section 63 was as follows:—

"LXIII.—Whenever in any district in which such commission shall have been appointed any question shall arise whether any or what land is liable to be assessed under the provisions hereinbefore contained as chowkeedaree chakran land, it shall be lawful for the magistrate to refer to such commission such question, and the decision of such question by such commission shall be final."

Baboo Issur Chunder Ghosal moved the addition to the section of the words "subject to appeal to the judge of the district." He thought that the right of an appeal should be given. Cases might occur in which the commissioners might make a mistake in their decision. The operation of the Act would not be confined to one particular district, but to the whole of Lower Bengal; and to guard against the possibility of injustice, provision should be made to give an appeal from the commissioners to the judge of the district.

Baboo Jotendro Mohun Tagore said that in making the investigations contemplated by the Bill questions of title would occur, and questions of title could only be satisfactorily decided by persons having large judicial experience. A right of appeal should therefore be given.

Baboo Onoocool Chunder Mookerjee said that the investigations to be made under this Bill would include the question as to what lands were *mal* and what chakran, and thus involve questions of title; and it was not quite clear by what rules the commissioners were to be guided in their investigations. It would be necessary therefore to allow an appeal to the zillah judge, from whose experience as a judicial officer a satisfactory decision might be expected. We were not quite sure what rules would be laid down for the guidance of the commissioners, and what rules for the reception of evidence, viz. what is legal and what is not legal evidence; and therefore in support of the amendment he (Baboo Onoocool Chunder Mookerjee) would submit that a judicial officer of some standing should have the power to see whether the determination of the commissioners was correct or otherwise.

Mr. Thompson said that the section did not refer to any question regarding the liability to assessment on account of any land: the commissioners had only to decide whether the land was *mal* land or chowkeedaree chakran land. Both the committee who reported on and recommended this Bill, and the select committee who discussed its provisions, thought it desirable that commissioners should be appointed to decide these disputes finally, with the express object of keeping them out of the endless litigation that was likely to ensue in the civil courts. The next section of the Bill provided that the procedure should be the same as that in settlement work which the collector carried on under Regulation VII. of 1822, and not the regular procedure which the civil courts followed. Under the impression that it was thought advisable to provide for the appointment of an officer of experience to give a final decision in cases of dispute, the majority of the committee decided that no appeal to the civil courts should be allowed.

Mr. Wyman thought it would only be right to allow an appeal to a judicial officer. He was disposed to support the amendment on the ground that it could not possibly do much harm and might protect the legal rights of the parties concerned.

Mr. Money said he was opposed to the amendment. In the first place it was rather anomalous to give an appeal to one person from the decision of two or three. The result practically would be to give an unfair advantage to one side over the other. If the decision of the commissioners was given against the zemindar, he would appeal. But if given on the other side the villagers from want of means could not, and the Government would not appeal. Practically, therefore, it would be giving one side great advantage over the other.

Baboo Issur Chunder Ghosal said that the hon'ble member who spoke last was opposed to the amendment on the ground that if the decision of the commissioners was against the zemindar, the chowkeedar or the village community would not be in a position to fight out the appeal; but on the other hand he (Baboo Issur Chunder Ghosal) did not see how the case would lie. What remedy would the hon'ble member suggest where the village community or the zemindar claimed more land than they were actually entitled to? The experience of the past shewed that the zemindar had suffered more at the hands of the officials than from those who were openly against them. He thought that in such cases as the one the council was considering, provision should be made for an appeal. If there was any difficulty in doing so, it was the business of the council to endeavour to overcome that difficulty. It was no reason, because there was a difficulty, that the question should be shirked.

The President pointed out that the amendment of the hon'ble member was rather to the new section which the hon'ble member in charge of the Bill intended to propose after section 64 than to the section now under consideration. He would suggest that the hon'ble member should withdraw his amendment, and propose it again when the motion for the introduction of the new section was made.

The motion was then by leave withdrawn, and the section was agreed to with some verbal amendments and the omission of the words "and the decision of such question by such commission shall be final."

Section 64 was agreed to.

Mr. Thompson moved the introduction of the following section after section 64:—

"LXIVA.—Such commission shall demarcate the boundaries of any lands which they may determine to be chowkeedaree chakran lands, and shall make orders under their hand setting forth the lands which they

shall have determined to be chakran chowkeedaree lands and the boundaries thereof, and the name of the village for the support of the chowkeedar of which such lands are assigned. Every such order shall be final and conclusive respecting all matters hereinbefore required to be set forth in such order so far as the same shall be therein set forth."

BABOO ISSUR CHUNDER GHOSAL moved the omission of the last clause of the section and the substitution for them of the words "every such order shall be subject to an appeal to the judge of the district, and the decision of such judge shall be final and conclusive."

THE HON'BLE ASHLEY EDEN said he was strongly opposed to the amendment. The cases which under this Bill the commissioners to be appointed would have to try were really settlement cases, which as district officers having large experience in such matters they would be thoroughly qualified to decide. A great deal would have to be done by local enquiry, and the persons appointed to be commissioners would be officers who were much more reliable for the purpose of such enquiries than the civil court ameen, who practically would be the officer who would have to demarcate disputed boundaries of chakran lands if the cases went into the civil court.

Another reason why he (Mr. Eden) was opposed to the amendment was the great expense attending appeals to the civil courts. The hon'ble gentleman had said that he did not see that any expense was involved in one case which was not involved in the other; but surely villagers appearing before commissioners and stating their case to them would have no expenses, while in the civil court they would have to buy stamps, employ pleaders, and incur all the expenses of a regular suit. Besides what status would the villagers have in a civil court: there would be a great practical difficulty in settling which of them had a right to sue. It was proposed to allow an appeal to the district judge; but it must be remembered that from the decision of the judge there would always lie an appeal to the high court, and there might perhaps lie an appeal to the privy council.

BABOO ONOOCOOL CHUNDER MOOKERJEE said that in the settlement law, Regulation VII. of 1822, under the provisions of which the commission is to act as far as necessary, except in the matter of the amount of the assessment of the land revenue, a right is reserved of contesting all other adjudications, as of area, and the party with whom the settlement is to be made, * * * by regular suit in the civil court, and there is also provision in that law for appeals to the Board of Revenue. If the same law (VII. of 1822) was intended to be made applicable to inquiries by commission under this Bill there would lie an appeal to the Board of Revenue, and the proceedings of the commission would be liable to be revised by a civil court. It is only proposed that instead of giving a right by regular suit to the party dissatisfied with the order of the commission, there should be allowed a right of appeal from the order of the commission to the zillah judge, who is a judicial officer of experience and acquainted with the rules of evidence. If the villagers can support their case before the commission and bear the expenses consequent to it, he (Baboo Onoocool Chunder Mookerjee) could not see why they, the same villagers, cannot prosecute or defend an appeal to the zillah judge. In answer to the objection as to interminable appeals and protracted litigation, he would suggest that only one appeal might be allowed and no more, and the decision on that appeal be declared final.

The council then divided:—

AYES 5.	NOES 6.
Baboo Jotendro Mohun Tagore.	Mr. Schalch.
Mr Wyman.	„ Thompson.
Baboo Chunder Mohun Tagore.	„ Money.
„ Issur Chunder Ghosal.	The Hon'ble Ashley Eden.
„ Onoocool Chunder Mookerjee.	The Acting Advocate-General.
	The President.

The amendment was therefore negatived and the section was agreed to.

Sections 65 to 68 were agreed to.

Section 69 was passed with verbal amendments.

The further consideration of the Bill was postponed.

The council was adjourned to Saturday, the 28th instant.

Saturday, the 28th May 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*.

J. GRAHAM, ESQ., *Acting Advocate-General*,
THE HON'BLE ASHLEY EDEN,
A. MONEY, ESQ., C.B.,
A. R. THOMPSON, ESQ.,
V. H. SCHALCH, ESQ.,
BABOO ISSUR CHUNDER GHOSAL,
BABOO CHUNDER MOHUN CHATTERJEE,
F. F. WYMAN, ESQ.,
AND
BABOO JOTEENDRO MOHUN TAGORE.

VILLAGE CHOWKEEDARS.

ON the motion of MR. THOMPSON the council proceeded to the further consideration of the report of the select committee on the Bill to provide for the appointment, dismissal, and maintenance of village chowkeedars.

The postponed section 1 was the interpretation clause.

After some verbal amendments, the definitions of the words "village" and "chowkeedar" were, on the motion of MR. THOMPSON, omitted as unnecessary.

MR. THOMPSON then moved the substitution of the following definition of "chowkeedaree chakran lands" for that contained in the Bill :—

"The words 'chowkeedaree chakran lands' shall mean lands which may have been assigned, otherwise than under a temporary settlement, for the maintenance of the officer who may have been bound to keep watch in any village and report crime to the police, and in respect to which such officer may have been liable to render service to a zemindar."

He said that the definition of this term had given some trouble to prepare, and, as he had explained on a former occasion, a more enlarged definition than that contained in the Bill was found necessary. He had stated that he found that the term "chowkeedaree chakran lands" was applicable to lands assigned for the support of the village policeman, by which assignment both the Government and the zemindar had some kind of right in the services of the chowkeedar; and generally, that that definition would apply to all chowkeedaree chakran lands in the western districts. But, as he had on a former occasion explained, there were some districts, especially Midnapore, where lands were assigned for the maintenance of the village police, but where the zemindar was not entitled to any service from the chowkeekar; and in such cases it would be perfectly unnecessary to make over the land or to remit any part of the assessment on those lands. Again, it was well ascertained, as the honorable member opposite (Mr. Schalch) could certify, that in the temporary settlements made in Orissa lands surrendered for purposes of police were exempted from assessment, and that in such cases the proprietors were not entitled to any compensation for the surrender of such land. The definition now submitted for the consideration of the council had been drawn up after careful consideration of all these points.

BABOO JOTEENDRO MOHUN TAGORE said that before the motion was put to the vote he would suggest that the definition should be made more explicit as regards the limitation of time within which the liability to service may have existed. It was well known that in many districts zemindars had been deprived, by the arbitrary acts of magistrates, of the services to which they were entitled from the village chowkeedar. Exercising powers in the double capacity of police superintendent and magistrate, these officers not only encroached upon the rights of the zemindars to nominate and dismiss the chowkeedars, but issued orders to the darogahs to prohibit the village watchmen from rendering services to the landholders, and in some cases they even went so far as to punish with fine or imprisonment those zemindars or their agents who employed the chakran-holders in the performance of *mal* duties. It was useless for the zemindars to contend against these proceedings, for their complaint lay to the very officer who had exercised such arbitrary powers. Many indeed had under the circumstances quietly

submitted to the wrong, but he would ask whether it was just that the present owners of land should be deprived of their rights because the zemindars of that time did not think it prudent to dispute the matter with the constituted authorities. He thought that no lapse of time should bar such equitable rights of a person, when it was ascertained that he had been unjustly deprived of them by the illegal proceedings of the district officers. He would therefore move the insertion of the words "at any time" before "liable."

Mr. Schalch said that he could not express his concurrence in the amendment, because it would have an extremely one-sided effect. As the wording of the proposed definition stood, if the zemindar could prove that he now received, or had within any reasonable time received, service from the chowkeedar, the commissioners would take that into consideration; but if the words "at any time" were inserted, the zemindar might attempt to make out that services were rendered at a period long anterior to the permanent settlement, and that would make the provision a one-sided one; because, though many zemindars had throughout the western districts very largely appropriated lands assigned for the maintenance of chowkeedars, the Bill did not propose that that question should be investigated. The Bill proceeded on the existing state of things: it did not propose to revive old contentions. He thought therefore that the definition should not be left so indefinite as the words proposed to be added would make it.

Baboo Joteendro Mohun Tagore said that he would have no objection to add to his amendment the words "after the permanent settlement." But if the state of things as they at present existed were only taken into consideration, zemindars who had been arbitrarily deprived by the magistrate of the services to which they are entitled from the village chowkeedar would not only lose their right to those services, but to the chakran lands as well, and that for no fault of their own.

Mr. Wyman said he understood that the Bill proposed to deal with the present state of things, and not to go back to some remote period in order to rectify abuses that had then occurred. The definition now proposed was a great improvement. He was not present at the meeting when it was proposed to make over to the zemindar the whole of the chowkeedaree chakran land and assess the zemindar at only one-half of its value; and, till this morning, he had not fully understood why the zemindar should have the whole of the land and be assessed at only one-half of its value. He now understood that the zemindar was entitled to certain services from the chowkeedar, and in consideration of his giving up his right to those services, he would receive as an equivalent the whole of the land, and be assessed at only one-half of its value. But to go back for the purpose of ascertaining whether at some remote period the zemindar was entitled to those services appeared to him (Mr. Wyman) open to very serious objection, as raising questions already settled, and to arrive at a satisfactory solution of which it would now be impossible. He would therefore oppose the amendment.

Baboo Issur Chunder Ghosal said that he thought the amendment proposed was a fair and just one, because if by any chance or by an order of the magistrate, the zemindar has been deprived of the services of the chowkeedar, he ought to be permitted to show his right to those services. It would be very hard if a zemindar was not allowed to prove his right to services of which he had been arbitrarily deprived. Of course, as originally proposed, the amendment was open to the objection that it was indefinite; but if, as the amendment now stood, the period within which the liability to service existed was restricted to a time *after* the date of the permanent settlement, he thought no reasonable objection could be raised to the proposition.

Mr. Thompson said, the council would remember that when the Chota Nagpore Tenures' Act was under discussion, great difficulty was experienced in settling those points which referred to the periods of limitation within which parties claimed the personal services of their tenants. In the present case the remedy was suggested of extending the period to the date of the permanent settlement, a proposition which he considered altogether preposterous. He would ask the hon'ble mover of the amendment whether, if a zemindar went to a civil court and claimed compensation for the loss of such services, he would get any compensation for services which he had not enjoyed within the last 12 years. If any limitation was to be

imposed, he (Mr. Thompson) thought it should be a limitation of 12 years, which was the general period of limitation in cases of this nature. He would however go further and take the hon'ble mover of the amendment on his own ground. It has been generally asserted, and by none more confidently than by the hon'ble member opposite (Baboo Issur Chunder Ghosal), that the zemindars have been in the habit of resuming these chowkeedaree lands and appropriating them to their own use. He (Mr. Thompson) was willing to say that if the zemindars were prepared to surrender the lands which they had thus appropriated, he would have no objection to meet them half way, and allow them to prove their right to services which they did not enjoy when the Bill came into operation; but if the advantage was to be all on one side, and the zemindar alone was to be allowed to prove his right to services which he had not received for the last 20, 30, or 50 years, he (Mr. Thompson) would most decidedly object to any proposal such as that which was now before the council. He would prefer that the definition should stand as proposed, or, at the furthest, that a limitation of 12 years be fixed.

Baboo Issur Chunder Ghosal said that the principle contended for by the hon'ble member in charge of the Bill appeared to be that because the zemindars have done some wrong, the Government ought to do something similar to recoup themselves for the loss sustained. If the zemindar has taken land that belonged to the chowkeedar, it was not right for the Government to treat the zemindars in an equally arbitrary and illegal manner. The suggestion made by the honorable mover of the amendment appeared to be just and fair.

Baboo Joteendro Mohun Tagore said he would read to the council a *roobokaree* which was issued by a magistrate in the year 1855, and which would show the arbitrary way in which the zemindars were forced out of their just rights:—

"No. 1788.

17*th December* 1855.

3*rd Pous* 1262.

Roobokarry of H. B. Lawford, officiating magistrate of the Fouzdary Court of zillah East Burdwan. Camp Gangooria.

In conformity with the circular letter No 6, dated the 8th December, of the circuit commissioner, Burdwan division, by which chowkeedars are prohibited from serving the zemindars, it is

Ordered

That perwannahs be issued to the darogahs to prohibit the chowkeedars in their jurisdiction from performing any services to the zemindars."

Mr. Thompson said he believed the hon'ble member was well aware that that order was set aside by the decision of the Privy Council, to which he (Mr. Thompson) had referred at a former meeting, and in which it was held that a zemindar in the Burdwan or Hooghly district was entitled to certain kinds of service from the chowkeedar. The order which the hon'ble member had read was perfectly obsolete.

Baboo Joteendro Mohun Tagore said that he only referred to the order as an instance. There were hundreds of similar cases which occurred before 1855, but in which no action had been taken.

The amendment was then negatived.

The original motion having been proposed—

Baboo Joteendro Mohun Tagore asked what would become of those chowkeedaree lands in respect of which the zemindar got no service.

Mr. Thompson explained that if at the time of the passing of this Act a chowkeedar rendered service to the zemindar, the commission appointed by Government to investigate these cases would be justified in admitting the land assigned for the support of such chowkeedar to come within the definition of chowkeedaree chakran land, and to be transferred to the zemindar; but if no service was rendered to the zemindar, the land would not be held to be of that description.

Baboo Joteendro Mohun Tagore said he thought that lands for which chowkeedars paid a quit-rent should be held to come within the definition of chowkeedaree chakran land.

Mr. Schalch said that he did not think that the paying of quit-rent had anything to do with the question of the compensation to be allowed for loss of services. Where the zemindar was entitled to the services of the chowkeedar along with a quit-rent, the land would be transferred to the zemindar under the provisions of this Bill. But where the zemindar only received a quit-rent, the land for which such quit-rent was paid would not fall within the provisions of this Bill; the zemindar would continue to receive the quit-rent, and would be in no worse position than that in which he was before.

Baboo Joteendro Mohun Tagore said that in that case the advantage would be all on the side of the chowkeedar, who would merely pay a quit-rent and enjoy the profits of the land without rendering any services either to the zemindar or the village community.

The motion was then carried.

On the motion of Mr. Thompson the following definition of the word "zemindar" was introduced after the above:—

"The word 'zemindar' shall mean the person whose name is registered in the general register of estates paying revenue directly to Government as the proprietor of an estate so paying revenue, or the person whose name is registered in the general register of rent-free tenures as proprietor of a rent-free tenure."

The section as amended was then agreed to.

The postponed section 2 was also agreed to.

Mr. Money moved the addition to section 3 of the following words:—

"Provided also that no punchayet shall be appointed in any village until some officer exercising any of the powers of a magistrate shall, in personal communication with the residents of that village, have explained to them the general duties of a punchayet and ascertained from them the names of the leading men in the village."

He thought some provision of the kind contemplated by the amendment would be required for the successful working of the Bill. In the remarks he had formerly made on section 48 he expressed a wish that one of the members of the punchayet should always be a man elected by the villagers as the headman of the village. There were, however, some difficulties connected with the introduction of such a provision, and though he still thought the Act would work better and with a fairer chance of success if the chief member of the punchayet was always the representative of the villagers, yet he confessed that such a provision was not necessarily connected with the purport of this Bill, and that its introduction at the present stage of the Bill might lead to some complication. He (Mr. Money) had therefore given up that point, but while doing so he was more convinced than ever of the necessity of personal communication with and explanation to the residents of every village in which the new provisions of this Bill are to be introduced. As the Bill stood, all that was provided was that the magistrate may appoint a punchayet; how was he to select? This point was not referred to. The *modus operandi* would vary with the idiosyncracies and prejudices of each officer. There were only three practicable modes of making the selection. The first was by applying to the police; the second, by applying to the zemindar; the third, by ascertaining the feelings and wishes of the people as to the men who should be appointed. The first two modes were no doubt the simplest and least troublesome, and therefore the most likely to be adopted. A magistrate who distrusted the police would apply to the zemindar; a magistrate who disbelieved in zemindars would ask the opinion of the inspector of police: having availed himself of one of these two sources of information, the magistrate would issue three or five sunuds. But it did not follow that the persons to whom sunuds would be issued would be acceptable to the people, or that they would even be the persons possessing the greatest influence with the villagers or the most respectable persons in the village. If they are not, it is clear that the successful working of the Act will be much jeopardized. He (Mr. Money) thought that it was most important that before the introduction of the Act into any village the villagers should know exactly the object and purport of the law. If some such amendment as that which he now proposed were not adopted, the first intimation which the villagers would receive of the proposed introduction of the Act might be the arrival in the village of the sunuds of appointment of the members of

the punchayet. He could conceive the state of bewilderment into which a village would thus be thrown. Possibly some explanatory order or perwannah might accompany the sunuds; but even if such were the case, the punchayet could not introduce the operation of the Act so satisfactorily as if its provisions had been personally explained to them by competent authority. It must be remembered that all the ryots in the districts of Bengal were not like those marvellous ryots of Burdwan and Hooghly, who had come up to the council with memorials showing a knowledge of the laws of Menu and Akbar and of the old regulations, superior probably to that possessed by any member of this council. He (Mr. Money) thought therefore that it was a matter of very great importance that the provisions of the law should in every case be clearly explained to the villagers.

He might be told, and probably would, that the object he had in view would be provided for satisfactorily by rules to be issued under section 68. He had no doubt that whatever rules will be passed by the Government will be judicious rules; but it appeared to him that it was a dereliction of duty on the part of any legislative body to trust to the executive Government for rules on any point which they considered really necessary to the satisfactory working of any measure which they may pass. It is the duty of the council to make their laws as complete as they can, and not to leave them to be supplemented and licked into shape by subsequent rules to be framed and issued by the executive Government. If the council agreed with him that the successful working of this Bill will depend on the extent to which the villagers are consulted as to the men to be appointed to the punchayet, and on the extent to which the object and purport of the law are explained to the village communities, then he hoped they would consider that this amendment or some similar amendment was necessary. The council would observe that the amendment was so worded as to leave to the magistrate exactly the same power of nomination as was already given him. He (Mr. Money) had no wish to tie down the hands of the magistrate to the nomination of any particular persons. All that he wished was that before the law came into operation in any village the villagers should have their say as to the people whom they would recommend as members of the punchayet, and that the general duties of the punchayet should be explained to them. If this were done, he felt sure that in ninety-nine cases out of one hundred the people whom the villagers wished to be appointed would be appointed, and the successful working of the law would so far be secured.

Baboo Issur Chunder Ghosal said that he would support this amendment with great pleasure, because when the Bill was before the police committee he had occasion to bring this point to notice, when he and another member of the committee were overruled. He thought the amendment would do a great deal of good, because personal communication with the villagers would be the means of facilitating the introduction of the Bill.

Mr. Wyman said he had also heard the amendment with great pleasure, because he thought the successful working of this Bill would depend entirely on the ability to carry with us the sympathies of the people. The villagers would be the most likely persons to know not only who were best qualified to act as members of the punchayet, but also who were the most likely to carry with them the sympathies and respect of the villagers themselves. He (Mr. Wyman) also thought it would be very desirable that the magistrate should explain to the villagers that the purport of the Act was not oppressive, but calculated for the benefit of the people and for their own protection. He thought that the amendment was calculated to do a vast deal of good.

Mr. Thompson said he fully recognised the force of the observations made by the hon'ble mover of the amendment as to the advisability of exercising the greatest care in the introduction of this Bill. In framing the Bill as it is, a chief object was that the great mass of details relating to the duties and procedure of punchayets should be provided for by rules to be framed and issued by the executive Government. Personally his own view was that it would be very much better that the manner of appointing punchayets should be provided for by the rules which the Lieutenant-Governor was empowered to issue, and he had no hesitation in saying, from the interest which Government took in this measure, that every endeavour would be made

by the Lieutenant-Governor to enforce very strictly the greatest care in the selection and nomination of those who were to be punchayets of villages.

The objection which he took to the amendment in the form in which it was presented was the almost impossibility of carrying out the law if it became obligatory on every magistrate to hold personal communication with the residents of every village, and to ascertain from them the names of the leading men of the village before any appointments could be made. If the council came to consider that in a sub-division there are at least 600 villages, and that in at least one-half of these villages the Bill would have to be introduced, the adoption of the amendment would necessitate the appointment of a special officer in each sub-division (which would be expensive as well as a source of delay) to go round to the villages in order to hold the required communication; or if the work was done by the sub-divisional officer himself, would interfere greatly with his regular duties, and make it impossible that the Act could be carried out in any one sub-division before the expiration of two or three years. If the effect of the amendment was that it was to be a condition precedent to the nomination of any punchayet that there should have been a personal communication with the residents of each village, he (Mr. Thompson) certainly thought there would be great difficulties in giving effect to such an arrangement. If any general form of amendment were proposed that on the first introduction of the Act in any sub-division the magistrate should issue a notice explaining its purport, and then leave it optional with him personally to consult the villagers as to the persons who should be appointed to the punchayet, the amendment would be less objectionable; but if the intention of the amendment was that the Act could not be introduced without this additional expense and trouble in every case, he (Mr. Thompson) was decidedly opposed to it.

Baboo Issur Chunder Ghosal said that he had been in charge of more than one sub-division, and he was one of the first to carry out the provisions of Act XXVI. of 1850. He never felt any difficulty in going over half a dozen villages in the course of a morning; and as no sub-division contained more than from 200 to 300 villages, the work of holding personal communication with the residents of the villages in any sub-division could be done in the course of two or three months at the most. Looking to the results to be gained from the course proposed, he thought it would be no great hardship to the sub-divisional officers to require them to hold personal communication with the residents of the villages in which the Act was to be enforced, and it would afford great relief to the villagers themselves. It was a matter for the consideration of the superior executive authorities whether the sub-divisional officers should be required to perform this duty. But he thought any officer who had the least energy and heart to do his work would be able to effect these arrangements in his sub-division within two or three months. Consequently he (Baboo Issur Chunder Ghosal) did not see the force of the objection raised to the amendment.

The President said he thought that the amendment as it stood was hardly admissible, and it seemed to him that it was not a very desirable provision to introduce into the Bill at all. As it was, the words "personal communication with the residents of the village" were too general: it would be necessary to add the words "or some of them" after "residents of the village;" and if that were done it would perhaps make the section more indefinite than the honorable member might wish. Still it did not appear to him (the President) that the amendment should be introduced with the general words "residents of the village," which might mean every resident.

Then he certainly objected to the concluding words of the amendment, requiring the magistrate to ascertain from the residents the names of the leading men of the village. He (the President) would prefer that the matter should be left to the executive Government, because he thought that on the whole the selections will be more readily and better provided for by rules framed by the Government than by a clause in the Act. If the Council on the whole were of opinion that this Act should not be introduced in any village until some officer had held personal communication with the residents or some of them, and had explained to them the general duties of a punchayet, then he thought that the provision, if amended as he had suggested, would not be so objectionable.

Mr. Money said that the effect of the objections taken to the amendment proposed by him appeared to be that the amendment, though good in principle, was difficult to put into practice. For his own part he could not say that he agreed as to the difficulty of carrying the proposed provision into practice. It appeared to him that the objections that had been taken arose from a misunderstanding of the scope of the amendment. It was not intended that the sub-divisional officer should go to each village to make the explanation required, and ascertain the wishes of the villagers as to the men to be appointed members of the punchayet. There had been nothing of that sort said or intended. He (Mr. Money) thought there should be personal communication between some officer and the residents of the villages in which the Act was about to be introduced. The manner in which such communication would take place would probably be as follows. The officer would pitch his tent at some large village and send for the residents of the neighbouring villages, and there explain generally the object and purport of the law, and ascertain the names of the leading men in each village. If it was impossible for the sub-divisional officer to do this within four or five months, it would be still more impossible for him to do what last Saturday the council by the law then passed contemplated every sub-divisional officer doing—namely, personally to conduct the enquiries necessary for the proper assessment and collection of the income tax. Here it was only necessary to make one explanation for each village, but in the assessment and collection of the income tax the means and profits of many individuals must be enquired into. He (Mr. Money) did not anticipate any such difficulty as had been represented in carrying out the provision contained in his amendment.

With regard to the suggestion which fell from his honor the president, to introduce the words "or some of them" after "residents of the village," and to leave out the last portion of the amendment as being somewhat vague, he (Mr. Money) would be happy to comply with that suggestion, because what was really required, namely, personal communication between the magistrate and the villagers, would still be secured. All he wanted was to secure such communications. It could not well take place without the opinion of the villagers being ascertained as to the persons they would wish to have appointed. He would, therefore, by leave of the council, withdraw his motion, and substitute the following:—

"Provided also that no punchayet shall be appointed in any village until some officer exercising any of the powers of a magistrate shall, in personal communication with the residents of that village or some of them, have explained to them the general duties of a punchayet."

Mr. Thompson said his objection partly was to the delay which the amendment would cause in the introduction of the Act throughout a sub-division, and partly because the object sought by the amendment would best be realised by rules framed by the executive Government. Where the law was silent as to the definite mode of procedure, there would be an absence of obligation in every case, and much would be left to the discretion of the local magistrate. As he had before said, the interest which the Government took in this Bill was a sufficient guarantee that the rules for carrying it into effect would be laid down with the greatest care and enforced with the greatest strictness. It was intended that the law should be introduced gradually and tentatively to avoid as far as possible the least cause for dissatisfaction. He was in hopes that when the Bill was once introduced in any place its success would stimulate the desire for its extension into other districts, and when that happened and the people were carried along with us, there would be no necessity for such an obligatory provision as the hon'ble member proposed.

The council then divided:—

Ayes 6.	Noes 4.
Baboo Jotendro Mohun Tagore.	Mr Thompson.
Mr. Wyman.	The Hon'ble Ashley Eden.
Baboo Chunder Mohun Chatterjee.	The Acting Advocate-General.
„ Issur Chunder Ghosal.	The President.
Mr. Schalch.	
„ Money.	

The motion was therefore carried.

On the motion of MR. THOMPSON some verbal amendments were made in section 41.

The postponed sections 48 to 50 related to the appointment of munduls in villages in which punchayets were not appointed.

MR. THOMPSON said he had considered the observations that had been made on these sections, but would nevertheless maintain the principle on which they were based. He thought that, with the amendments of which he had given notice, they were not fairly open to the objections that had been taken to them. He would move in section 48 the insertion of the words "with the consent of such resident" after "village" in line 9, and the addition to the section of the words "for the purposes of this Act."

BABOO JOTEENDRO MOHUN TAGORE said that he would once more beg leave to represent the extreme hardship of the position in which the zemindar would be placed by the Bill requiring him to do what he was powerless to do, and then imposing on him a heavy penalty for not complying with the requisition. Where the zemindar had a mundul he might be able to make the nomination, but even in such cases it was not likely that the mundul would always be willing to undertake such heavy responsibilities. In the villages in the Eastern districts the zemindars had no munduls, and in such cases, if the zemindar was obliged to make a nomination, and the nominee withheld his consent, the zemindar would be placed in a very difficult position, for he had no power to compel any person to accept the office of mundul if he did not choose to act; and even in villages where there were munduls, it would be placing the zemindar too much in their hands, inasmuch as they would be in a position to dictate their own terms before they consented to accept the responsibilities which this Bill proposes to attach to the office, knowing that there was a heavy penalty for the zemindar if he failed to make a nomination, while they could with perfect impunity refuse to act. He (Baboo Joteendro Mohun Tagore) would therefore oppose the amendment.

The HON'BLE ASHLEY EDEN said, that in addition to what he had stated on a former occasion, it seemed to him that the zemindar was already bound to report to the police certain classes of offences occurring within any of his estates, and for this purpose he must possess some agency in every village within his estate. The zemindars would therefore, for the purposes of this Bill, naturally select the persons on whom they at present depended for making reports to the police. He (Mr. Eden) thought there could be no hardship in requiring a zemindar to employ one servant in each village: whatever he paid now he would continue to pay, and he would be exactly in the same position as before.

BABOO JOTEENDRO MOHUN TAGORE said the honorable member who spoke last had not taken into consideration the case of the Eastern districts to which reference had been made. In those districts the zemindar merely had his general gomashta, and consequently had to pay no one for conveying information to the police. But the gomashta could not be made mundul, because he was not a resident of that particular village. He (Baboo Joteendro Mohun Tagore) would suggest that on the zemindar reporting to the magistrate that the person whom he nominated refused to act, some penalty should be imposed on the person so refusing; but if no remedy was given to the zemindar, it would be placing him in a very false and precarious position.

BABOO ISSUR CHUNDER GHOSAL said he did not see the advantage of inserting the words "with the consent of such resident." Suppose a zemindar chose to nominate a person with whom he was at feud, that person would never give his consent to such nomination.

THE PRESIDENT observed that from the wording of section 50 it would appear that the insertion of these words in section 48 was intended, and only inadvertently omitted.

MR. SCHALCH said, no doubt it was intended that the consent of the person nominated should be secured, because otherwise the zemindar had only to nominate any person, whether he consented to act or not, and if the person refused to act as mundul, the zemindar could not be required to make a fresh nomination.

MR. THOMPSON said, when the council considered the very limited extent to which these sections would apply, as they were only applicable to the few villages in which there were less

than 60 houses, or which could not be formed into unions, he did not see that there was any better alternative for the council to adopt. In almost all villages the zemindar had some person to attend to his work, with whom he could easily make arrangements to perform these duties.

The council then divided:—

Ayes 8.	Noes 2.
Mr Wyman	Baboo Joteendro Mohun Tagore.
Baboo Chunder Mohun Chatterjee.	„ Issur Chunder Ghosal.
Mr Schalch	
„ Thompson.	
„ Money	
The Hon'ble Ashley Eden	
The Acting Advocate-General.	
The President	

The motion was therefore carried

Baboo Jotendro Mohun Tagore moved the addition to the section of the following proviso:—

"Provided that when more persons than one may be zemindars of the village, the person having the largest interest shall be required to nominate such manager. Where each or any such person or persons have an equal interest, it shall be in the discretion of the magistrate to require any one of such persons to make such nomination."

After some conversation—

Mr. Thompson said, that considering the trouble that the settlement of these sections had involved, and the very little good that was likely to ensue from their operation, considering further, that the general regulations required zemindars to report the occurrence of certain crimes within the limits of their estates, he (Mr. Thompson) thought it would be better to omit these sections altogether. After the Bill was recalled the council might take into consideration the advisability of introducing some provision in the Bill which should maintain in all its strictness the liability of the zemindar to report crime in such places. He would therefore move that sections 48, 49, and 50 be omitted.

The motion was agreed to.

On the motion of Mr Thompson verbal amendments were then made in sections 51, 52, and 39, and the preamble and title were agreed to.

The council was adjourned to Saturday, the 4th June.

Saturday, the 4th June 1870.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*.

J. Graham, Esq., *Acting Advocate-General*,	Baboo Onooocool Chunder Mookerjee,
The Hon'ble Ashley Eden,	Baboo Chunder Mohun Chatterjee,
A. Money, Esq., C.B.,	T. M. Robinson, Esq.,
A. R. Thompson, Esq.,	and
V. H. Schalch, Esq.,	F. F. Wyman, Esq.

The Hon'ble Ashley Eden moved that the Bill to appoint commissioners for making improvements in the port of Calcutta be re-considered in order to the settlement of the clauses.

The motion was put and agreed to.

On the motion of Mr. Eden the following amendments were made in the Bill :—

The blank space in section 7, which related to the amount of debt due from the commissioners to the Secretary of State for India, was filled up with the words "ten lakhs of rupees."

Section 8 was struck out, and the following sections were substituted for it :—

"VIII.—The said amount shall be repaid by the said commissioners to the said Secretary of State by triennial instalments of such amount and at such times as in Schedule (B) to this Act are appointed for the payment thereof; and every other sum which may become due from the commissioners to the said Secretary of State shall be, in like manner, by them repaid to him in ten equal triennial instalments, each of one-tenth of the amount of such sum,—the first of such instalments to be paid on the 1st day of April which shall be next after the completion of twenty-four calendar months from the day on which such sum shall become due, and the other instalments to be paid respectively on the 1st day of April in every third year, computing from the day fixed for the payment of the first of such instalments."

"VIIIA.—Interest at the rate of 4½ per cent. per annum shall be paid by the commissioners to the said Secretary of State upon all sums which for the time being may be due to him from them upon the 31st day of March and the 30th day of September in each year, the first of such payments of interest upon the said sum of ten lakhs to be calculated from the 1st day of August 1870, and to be made on the 31st day of March in the year 1871; and the first of such payments of interest in respect of any other sum which may become due or payable from the said commissioners to the said Secretary of State to be calculated from the day on which such sum shall become due, and to be made on the 31st day of March, or the 30th day of September, whichever may first happen next after such sum shall have become due."

A verbal amendment was made in section 17.

Section 47 was as follows :—

"At a special general meeting to be held in the month of February in each year, the salaried chairman or salaried vice-chairman shall lay before the commissioners a separate estimate of the expenditure and income of the commissioners under this Act for the year commencing on the 1st day of April then next succeeding, in such form as the Lieutenant-Governor of Bengal shall, by an order published in the *Calcutta Gazette*, direct: provided always that such estimate shall be completed and printed, and a copy thereof sent by post or otherwise to each commissioner at least ten clear days prior to the meeting before which the estimate is to be laid."

The words from the beginning to "next succeeding" were omitted, and the following words were substituted for them :—

"The salaried chairman or salaried vice-chairman shall, at a special general meeting to be held within two months after the commencement of this Act, lay before the commissioners a separate estimate of the expenditure and income of the commissioners for the period which shall be to come from the commencement of this Act up to the 1st day of April; and shall also, at a special general meeting to be held in the month of February in each year, lay before the commissioners a like estimate of such income and expenditure for the year commencing on the 1st day of April then next ensuing. Every such estimate shall be"—

Verbal amendments were made in sections 49, 55, 57, and 58.

The following new section was introduced after section 59 :—

"Whenever any goods shall be landed by the commissioners from any vessel under the powers by this Act conferred on them, they shall, if thereunto required, give to the person in charge of such vessel a receipt in the form or to the effect in Schedule D set forth, and may in any such receipt include all goods landed from such vessel during one day, and no person to whom such receipt shall have been so given, nor the master nor owner of the vessel from which the goods in respect of which such receipt shall be given may have been landed, shall be liable for any loss or damage to such goods which may occur after they shall have been so landed."

Verbal amendments were made in sections 60, 61, and 62.

The following words were added to section 67 :—

"And the said goods shall remain subject to all liens to which they would have been liable if they had remained in the possession of the commissioners, and to the power of sale hereinafter given."

A verbal amendment was made in section 87.

On the motion of Mr. Schalch verbal amendments were then made in sections 67 and 68.

After some formal and verbal amendments made on the motion of Mr. Eden in sections 88, 89, and 98—

The following schedules were introduced before Schedule C :—

SCHEDULE A—*(referred to in section 7)*

Details of the several sums to be taken as due from the commissioners for making improvements in the port of Calcutta to the Secretary of State for India in Council.

	Estimated cost of work. Rs
Improvement of the river bank at Calcutta near Jaggernauth ghaut for the accommodation of the country boat traffic	1,17,936
Constructing four screw-pile jetties, with steam cranes and goods' sheds, on the strand bank, Calcutta	5,28,500
Making lots Nos. 13 to 24 on the strand bank, Calcutta, available for export traffic	11,913
Constructing two screw-pile jetties, with tramways, cranes, and hoists, opposite the existing north Custom House shed on the strand bank, Calcutta	2,15,115
Constructing offices, &c., for the use of the officers employed on the new jetties on the strand bank, Calcutta	12,010
Supplying two steam hoists for single crane jetties, Nos. 1 and 3, on the strand bank, Calcutta	4,585
Minor works and expenses, contingent and establishment charges, and cash balance made over	1,10,541
Total ...	10,00,000

SCHEDULE B—*(referred to in section 7)*.

Sums to be paid in discharge of the principal of the amount by section 8 declared to be due from the commissioners to the Secretary of State, and times fixed for such payment.—

			Rs
1st	August	1873	1,00,000
,,	,,	1876	1,00,000
,,	,,	1879	1,00,000
,,	,,	1882	1,00,000
,,	,,	1885	1,00,000
,,	,,	1888	1,00,000
,,	,,	1891	1,00,000
,,	,,	1894	1,00,000
,,	,,	1897	1,00,000
,,	,,	1900	1,00,000

And the following schedule was introduced after Schedule C :—

SCHEDULE D.

FORM OF RECEIPT FOR GOODS.

By the commissioners for making improvements in the port of Calcutta.

Landed during the day of from the by the commissioners for making improvements in the port of Calcutta the noted in the margin *(if there be any apparent injury this is to be stated)*, contents and state of the contents unknown.

For the commissioners for making improvements in the port of Calcutta.

A. B

CALCUTTA: . }
day of 18 . }

Section 34 was as follows :—

"No new work, the estimated cost of which shall exceed two thousand rupees, shall be commenced by the commissioners, nor shall any contract be entered into by the commissioners in respect of any such new work until a plan and estimate of such work shall have been determined on and approved by the commissioners at a meeting, and shall have been thereafter submitted to the Lieutenant-Governor of Bengal and sanctioned by him in an order published in the *Calcutta Gazette*; and in case the estimated cost of any such new work shall exceed two lakhs of rupees, the said Lieutenant-Governor shall not sanction the same until such plan and estimate shall have been submitted to the Governor General of India in Council and approved by him."

On the motion of MR. EDEN an amendment was made in this section to the effect that the sanction of the Lieutenant-Governor should only be necessary in case the cost of any new work should exceed ten thousand rupees.

The council was adjourned to Saturday, the 11th June.

Saturday, the 11th June 1870.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*.

J. Graham, Esq., *Acting Advocate-General*,
The Hon'ble Ashley Eden,
A. Money, Esq., C.B.,
A. R. Thompson, Esq.,
V. H. Schalch, Esq.,
Baboo Onookool Chunder Mookerjee,
Baboo Chunder Mohun Chatterjee,
and
Baboo Jotendro Mohun Tagore.

CALCUTTA PORT IMPROVEMENT.

On the motion of Mr. Eden the Bill to appoint commissioners for making improvements in the port of Calcutta was passed.

VILLAGE CHOWKEEDARS.

Mr. Rivers Thompson said that before moving that the Bill to provide for the appointment, dismissal, and maintenance of village chowkeedars be passed, he wished to suggest some amendments that had been brought to his notice during the period which had elapsed since the Bill was last under consideration. It had been represented to him by certain native gentlemen who were interested in this measure that the provisions of sections 3 and 4 of the Bill, which limit the operation of the law to villages containing more than 60 houses, or to unions of two or more villages containing together more than 80 houses, would interfere with the general extension of the benefits of the Act. It had been represented also that very often the inhabitants of villages of less than 60 houses would be anxious to secure the advantages of the proposed system, and the suggestion had been made that the Bill should provide for the extension of the law to places to which it would not now apply, on the expression of such a wish by the majority of the residents of any village. He would therefore move the introduction of the following section after section 4:—

"IVA. Whenever the majority in number of the adult male residents in any village, or in two or more villages so situate as in section 4 is set forth, shall by a writing signed by them apply to the magistrate of the district for the appointment of a punchayet in such village or villages, it shall be lawful for him to appoint a punchayet under this Act in such village or villages without regard to the number of houses therein contained, and all the provisions of this Act shall apply to such punchayet and to such village or villages."

The motion was agreed to.

On the motion of Mr. Thompson verbal amendments were made in section 47; and to Schedule B, which specifies the offences to be reported by the chowkeedar and for which he may arrest, "culpable homicide" and "theft" were added.

Mr. Schalch said that he had some amendments to move in the sections relating to the investigation of disputes relating to chowkeedaree chakran lands. Section 57 provided that a commission should be appointed for the determination of all disputes relating to chakran lands in the villages in which the Act was introduced, but no provision was made for determining such disputes relative to chakran lands as might exist in villages in which, owing to an insufficient number of houses, no punchayet was appointed. It was true that these lands might remain secured for the services of the officer who reported crime to the police and kept watch in the village and performed certain services for the zemindar; but if some provision was not made for ascertaining and recording these lands, they might disappear in the same way as the council had been told chakran lands in some places had already disappeared. He would therefore suggest that the commission appointed to investigate disputes regarding chakran lands, in which a punchayet had been appointed, should also be empowered to settle disputes regarding these lands in other villages, so that the lands could be brought under registry, and the magistrate could see that they were kept for the purpose for which they were assigned.

MR. SCHALCH then moved amendments in sections 57, 58, and 60, which made the sections stand thus, the amendments being printed in italics:—

"LVII. In any district or part of a district in which *may be situated lands before the passing of this Act assigned for the maintenance of an officer to keep watch in any village and to report crime to the police,* it shall be lawful for the Lieutenant-Governor of Bengal, by an order to be published in the "Calcutta Gazette," to appoint a commission consisting of one or more persons, to ascertain and determine the chowkeedaree chakran lands *and other lands before the passing of this Act assigned for the maintenance of an officer to keep watch in any village and to report crime to the police* in such district."

"LVIII. Whenever in any district in which such commission shall have been appointed any question shall arise whether any or what *lands are chowkeedaree chakran lands or other lands before the passing of this Act assigned for the maintenance of an officer to keep watch in any village and to report crime to the police,* it shall be lawful for such commission to enquire into such question."

"LX. Such commission shall demarcate the boundaries of any lands which they may determine to be chowkeedaree chakran lands *or other lands before the passing of this Act assigned for the maintenance of an officer to keep watch in any village and to report crime to the police, and* shall make orders under their hand setting forth the land which they shall have determined to be chowkeedaree chakran lands *or other lands as aforesaid,* and the boundaries thereof and the name of the village for the benefit of which such lands are assigned, *and distinguishing whether such lands be or be not chowkeedaree chakran lands or other lands as aforesaid.* Every such order shall be final and conclusive respecting all matters hereinbefore required to be set forth in such order so far as the same shall be therein set forth."

MR. THOMPSON said that in consequence of the omission from the Bill of the sections regarding the appointment of munduls in villages in which punchayets were not appointed, it would be necessary to introduce a section declaring the liability of zemindars under the old regulations to remain intact. He would therefore move the introduction of the following section after section 64:—

"Nothing in this Act contained shall diminish or in any way affect any liability, duty, or obligation of any zemindar under any law in force at the time of the passing of this Act to report crimes or offences occurring within his estate or tenure."

The motion was agreed to.

On the motion of Mr. Schalch the following section was introduced after the above:—

"Nothing in this Act contained, save the provisions of sections 57, 58, 59, and 60, shall affect any lands before the passing of this Act assigned for the maintenance, in any village in which a punchayet may not be appointed, of an officer to keep watch in such village and to report crime to the police, and every such officer in such village shall be bound to perform the same duties and shall have the same rights unto such lands and may be removed and a successor to him appointed as if this Act had not been passed."

BABOO ONOOCOOL CHUNDER MOOKERJEE said there was in the original Bill a provision that the chowkeedar should keep watch in the village. The select committee had, however, omitted that provision from the Bill. But as he had been informed that villagers in general were very anxious that the chowkeedar should act as a preventive as well as detective officer, he would move an amendment to the 7th clause of section 38, so that it should stand thus:—

"7th. He shall obey the orders of the punchayet in regard to keeping watch in the village and other matters connected with his duties as chowkeedar."

BABOO JOTEENDRO MOHUN TAGORE said that he would support the amendment. The Bill originally contemplated that the chowkeedar should keep watch and ward in the village, and he did not see why the chowkeedar should not be bound to do so: the more so as the villagers were going to pay a certain amount of tax for the maintenance of the chowkeedar, and they should not be deprived of the security afforded by the chowkeedar keeping watch in the village.

The motion was agreed to.

On the motion of MR. THOMPSON the Bill was then passed.

DACCA CONSERVANCY.

On the motion of MR. EDEN the report of the select committee on the Bill for improving the sanitary condition of the town of Dacca was taken into consideration in order to the settlement of the clauses of the Bill.

The Bill was agreed to without amendment, and was then passed.

The council was adjourned *sine die.*

Saturday, the 26th November 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*

A. MONEY, ESQ., C.B.,
A. R. THOMPSON, ESQ.,
T. M. ROBINSON, ESQ.,
BABOO JOTEENDRO MOHUN TAGORE,
BABOO ONOOCOOL CHUNDER MOOKERJEE,
T. H. WORDIE, ESQ.,
AND
BABOO DIGUMBER MITTER.

NEW MEMBERS.

MR. THOMPSON AND MR. WORDIE took the oath of allegiance and the oath that they would faithfully fulfil the duties of their office.

BABOO DIGUMBER MITTER made a solemn declaration of allegiance, and that he would faithfully fulfil the duties of his office.

RECOVERY OF ARREARS OF REVENUE.

MR. MONEY moved for leave to bring in a Bill to amend the procedure for the recovery of arrears of land revenue in respect of tenures not being estates. He said that Act VII of 1868, passed by this Council, made further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue, and section 11 of that Act provided that "whenever any revenue payable to Government in respect of any tenure not being an estate shall be in arrear after the latest day of payment fixed in the manner prescribed in section 3 of the said Act XI of 1859, the collector to whom such revenue is payable may cause to be affixed such notices as are mentioned in section 5 of the said Act XI of 1859."

The notices mentioned in section 5 of Act XI of 1859 were notices to be affixed for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of that Act; whereas the notices referred to in section 11 of Act VII of 1868 would appear to be mere notices of sale under the procedure of Act XI of 1859, that is, notices that by section 6 of Act XI of 1859 should be affixed after the latest date of payment. It seemed, therefore, according to the learned Advocate-General's opinion, that section 5 was a verbal mistake for section 6, and it was considered advisable to alter the Act so far.

But in addition to that another slight alteration seemed necessary. Act VII of 1868 provided no definite procedure for the sale of tenures for arrears (other than arrears of the current year) except under section 18 and the following sections, the sales under which were sales under the civil law. It appeared advisable that when tenures are sold for arrears other than those of the current year, they should be sold under a procedure giving to the buyer the same advantages as are provided for sales of estates on account of current years.

These were the two alterations in Act VII of 1868 that seemed advisable, and he therefore begged to move for leave to bring in a Bill for that purpose.

The motion was agreed to.

VILLAGE CHOWKEEDARS.

MR. RIVERS THOMPSON moved for leave to bring in a Bill to amend the Village Chowkeedaree Act, 1870. He said that the circumstances which had necessitated a recourse to further legislation in amendment of the Village Chowkeedaree Act were given in the statement of objects and reasons which would accompany the Bill. He might briefly explain that the assent of the Governor General to the Bill passed by this Council in the last session arrived only on the 11th of October 1870. Immediate action was taken to give effect to the measure in selected districts; but it was reported by commissioners that under the operation of section

16 of the law the time intervening was too short to carry out the necessary preliminary arrangements. It would be remembered that at one of the last meetings of the Council a proposal was carried by the hon'ble member opposite (Mr. Money) that no punchayets should be appointed in any village without previous personal communication between some magisterial officer of the district and some of the villagers of the village in which the arrangement was to be enforced. The proposition was objected to at the time as likely to cause unusual delay, but the consideration prevailed that it would be of great advantage that the members to be employed on the punchayet should, on the introduction of so novel a measure, be fully instructed in their duties, and the amendment was carried.

Now, by section 16 of the law, it was provided that the punchayets should furnish a list of the assessments two clear months before the first day of the year current in the village. The first day of the Bengalee year occurred about the 15th April, and by the 15th February these lists would have to be furnished. Before that date all the preliminary arrangements for the appointment and education of the punchayets would have to be effected; and, under the provision of the law which he had referred to, the work admittedly must be done village by village, very gradually and very slowly. The time for doing this effectually before the 15th February was too short, and, as the law stood, if it was not done by that date the matter must lie till the succeeding year. The object of the present Bill was to remedy these defects by an alteration of section 16.

The opportunity would be taken of correcting section 2. As the introduction of the measure must be very gradual, the repeal of the existing law regarding the status and duties of village chowkeedars must be gradual also. It was proposed by certain verbal alterations to amend the section, so that the repeal of the present law, under Regulation XX of 1817, should apply only, as punchayets and chowkeedars were appointed in each village under the Act of last session.

With these remarks he begged to move for leave to bring in the Bill.

The Council was adjourned to Saturday, the 3rd December 1870.

Saturday, the 3rd December 1870.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*.

The Hon'ble Ashley Eden,
V. H. Schalch, Esq.,
A. Money, Esq.,
A. R. Thompson, Esq.,
T. M. Robinson, Esq.,
and
Baboo Digumber Mitter.

DRAINAGE AND IRRIGATION OF DISTRICTS.

The Hon'ble Ashley Eden moved for leave to bring in a Bill to facilitate the drainage and irrigation of districts in Bengal. He said it was well known that since the year 1861 the attention of the Government of Bengal had been directed to the virulent epidemic fever which had prevailed in several districts, and was attended with very great loss of life. He did not propose to drag the Council through the several reports that had from time to time been made on the subject. It had been investigated by special committees, by sanitary commissioners, engineers, and others; and although there were differences of opinion as to the real causes of the fever, there seemed to be a very general unanimity of opinion that at least one of the chief causes was the miasma arising from insufficient drainage consequent on the silting up of water-courses and khals in the districts.

In consequence of these reports, last year a civil engineer was deputed to investigate and report upon the possibility of draining the Hooghly district. This duty was well performed by Mr. Adley, who was employed in the investigation of the swamps west of the town of Serampore and between Bally and Biddabatty. He examined those localities and submitted reports, illustrated with plans and sections, showing the relative levels of the swamps with the adjacent country, and with the tide water in the Hooghly. From the first of these reports it appeared that the khals or natural drainage channels which once led from these swamps to the Hooghly, and were formerly navigable for small craft throughout the year, had so silted up as to be only capable of carrying off the marginal overflow during the monsoon; and he went on to show by statistical tables that the want of drainage was the probable cause of the prevalence of this type of fever in that particular locality. The Lieutenant-Governor accordingly addressed the Government of India to the effect that, although he did not altogether agree that the want of drainage was the sole cause of the fever, he accepted it as one of the main causes that produced the fever; and, as the existence of such swamps as those west of Serampore could not but be a fruitful source of malaria, he was of opinion that measures should be taken to remove them and to bring the land which they occupied under regular cultivation, and with that view had issued orders for the preparation of detailed plans and estimates. Those estimates had since been prepared, and the cost of the measures would be about three lakhs of rupees. The zemindars of the estates situated in the swamps were ready to co-operate in the arrangements if the Government would bear the first cost and would engage to repay the outlay by annual instalments out of the increased rents. The Government of India had agreed to advance the money, on the understanding that a Bill should be passed providing for the re-payment of interest and capital at fixed periods, so that eventually there should be no loss to the public revenue. The money expended for this improvement must be recovered from those on whose lands the improvement would take place. The zemindars themselves were strongly in favor of the measure, and Baboo Joykissen Mookerjee, one of the most enlightened as well as the chief zemindar in that locality, to whom a copy of the draft Bill was forwarded, replied in the following terms:—

"The Bill in question, when passed into law would supply a desideratum which has been long felt. There is at present no difference of opinion on the part that defective drainage is at least the principal, if not the sole, cause of the epidemic visitations by which the population of some of the best districts in Bengal has been perceptibly wasting away. Year after year thriving villages have been thinned and depopulated, and thousands of families have been reduced to penury and wretchedness, and almost every year has seen new marshes and waste lands coming into existence in places which previously yielded abundant harvests; and yet the general apathy against all sanitary improvements, the want of union among the several classes of landed interests, and their positive and antagonistic relations in some cases, have hitherto thrown insurmountable obstacles in the way of all effective measures for the removal of the evil. Sympathy for suffering humanity and self-interest itself have been alike powerless to induce the different classes of persons connected with the land to enter into voluntary associations for the purpose of restoring the free drainage of the country, and I know of more than one instance in which the obstructiveness of one or two individuals has thwarted projected drainage measures which would have improved the sanitation of a number of villages, and at the same time yielded an annual profit of cent per cent on the respective contributions of each owner. The proposed law would put an end to the sad state of things. It is unquestionable that, in so doing, it would interfere with one's rights of private property, but I humbly think that in cases in which the abuse of such rights is attended not simply with pecuniary loss to the owners themselves, but with the loss of lives of hundreds and thousands of their fellow beings and with pecuniary loss as well to their neighbouring owners, a law like the one proposed would do immeasurably more good than harm. The best guarantee against an undue interference with private right has been offered by the provision in the Bill itself, which vests the determination of all questions connected with drainage to a committee of commissioners, the majority of whom will be elected from among the zemindars themselves."

It was with the view of meeting the wishes of the Government of India in regard to securing the re-payment of the loan that this Bill was introduced. It provided for the appointment of commissioners, four of whom should be owners of estates in the district, and in addition there were to be certain ex-officio commissioners, namely, the magistrate of the district, the executive engineer, and the civil surgeon. It was proposed that any proprietor

or other person having a perpetual interest in not less than one-half of a revenue-paying village might apply to the commissioners for the improvement of the drainage of that tract on the principle that the expense of making the improvement should be a charge on the land improved, and on undertaking to pay any preliminary expenses that might be incurred in case such improvement shall not be carried into effect. Every such application would be published, and the commissioners would consider objections that may be received within one month. When the commissioners differed in opinion as to the advisability of making any proposed improvement, the commissioner of the division would decide. The same powers were to be exercised for the acquisition of land for these improvements as in the case of land needed for public purposes; and all costs incurred on account of the preliminary survey, and of the preparation of the scheme and estimates, were to be recovered as arrears of revenue. After the objections (if any) had been overruled, the scheme and estimates would be laid before the Lieutenant-Governor, and, when approved by His Honor, the collector would issue a notification calling on the proprietors interested to pay their respective shares of the expenses within one month, or to enter into engagements for payment within a certain number of years. All sums so payable would be a charge on the land improved, and would be recoverable as an arrear of revenue. Any compensation that may be paid for lands taken under the Act, or payments made on account of damage inflicted, would be deemed to be a part of the expense of construction; and the cost of maintenance would be met by the officer in charge of the canals, and be paid by the zemindars in the proportions of their original contributions.

He proposed to read the Bill next week, and he thought it would be desirable for honorable members at that opportunity to discuss the matter thoroughly, in order that the select committee to whom the Bill would be referred might have before them the views of the Council at large: otherwise we should possibly have long discussions and great delays afterwards, as what had been done by the committee might have to be undone.

With these remarks he begged to move for leave to bring in the Bill.

The motion was agreed to.

EMBANKMENTS AND DRAINAGE.

The Hon'ble Ashley Eden postponed the motion, which stood in the list of business, for leave to bring in a Bill to provide for embankments and drainage.

VILLAGE CHOWKEEDARS.

Mr. Rivers Thompson moved that the Bill to amend the Village Chowkeedaree Act, 1870, be read in Council. The Bill had reference to the objects of which he had given an explanation at the last meeting, and comprised only a few sections to secure those objects. The first section is intended to regulate the repeal of the existing law regarding the status and position of the chowkeedar according to the gradual extension of the new Act to villages and sub-divisions; and sections 2 to 4 have for their object to give greater elasticity to the provisions of section 16 of that law, so that the Government should not be restricted, as it is by the Act as it now stands, to the introduction of the measure from the beginning of each year, but may have power to apply it, at its convenience, at any time during the year. He should propose presently that a select committee be appointed to consider the sections of the Bill, because, though few in number, they may be found to affect other provisions of the law not intended to be affected

The motion was agreed to, and the Bill referred to a select committee, consisting of Mr. Schalch, Baboo Joteendro Mohun Tagore, and the mover Mr. Thompson, with instructions to report within ten days.

The Council was adjourned to Saturday, the 10th instant.

Saturday, the 10th December 1870.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*

T. H. COWIE, ESQ., *Advocate-General,*
THE HON'BLE ASHLEY EDEN,
A. MONEY, ESQ., C.B.,
A. R. THOMPSON, ESQ.,
V. H. SCHALCH, ESQ.,
BABOO JOTEENDRO MOHUN TAGORE,
T. H. WORDIE, ESQ.,
AND
BABOO DIGUMBER MITTER.

THE ADVOCATE-GENERAL took the oath of allegiance, and the oath that he would faithfully fulfil the duties of his office.

DRAINAGE AND IRRIGATION OF DISTRICTS.

THE HON'BLE ASHLEY EDEN moved that the Bill to facilitate the drainage and irrigation of districts in Bengal be read in Council. He said that he hoped the Council in discussing this Bill would consent to look upon it as a tentative measure—as the groundwork of future legislation possibly on the subject. The subject was an entirely novel one, and without some practical experience of the working of the law on the subject, it would be difficult to draw a Bill which should meet all the points which might arise. If this Bill passed, and was tried in some one part of the country, we should have valuable experience for preparing, later, a more complete measure for extension to the whole country. Something must be done to remedy the state of things in the districts surrounding Calcutta. On this point every one was agreed; and though there were reasons to doubt whether it was the only cause of the evil, there was no question that the miasma arising from damp, caused by the choked drainage of the country, was the main cause of the epidemic fever that had been raging for the last few years. There were two theories with regard to the exact cause of the obstruction to the drainage. One was that it was the railway, and roads in connection with them, which had stopped up the drainage of the country, and the few who held that opinion maintained that the stoppage having been caused by works undertaken for the good of the general public, the improvement of the drainage should be effected from the public revenues. On the other hand, there was a very large majority of experienced and scientific men who maintained that the obstruction to the drainage was caused from the silting up of khals and other water-courses, which had blocked up the drainage of large bheels and spread dampness and miasma into all the villages whose drainage was in the direction of such bheels; and that the persons responsible for opening out the drainage were mainly the zemindars, who had omitted to maintain the water-courses, and who, in many cases, had stopped them up to create fisheries. Any person who had carefully read the reports that had been made on this subject, especially the reports of Mr. Isaac and Mr. Adley, confirmed by the opinion of so eminent an authority as Mr. Leonard, must agree that the latter of these theories was correct, and that the drainage of the country was not stopped by roads and railways, but by the gradual silting up of the khals and water-courses, which carried the water from the bheels to the river.

This theory was quite in accordance with the ideas of the people who had suffered. The villagers in many cases came themselves and pointed out the particular khals that had silted up, and to which they attributed the cause of their disease, and offered to contribute money to have these khals opened. There could be no stronger evidence in this country to the genuineness of the convictions of the lower classes, than when the people there voluntarily came forward and offered to expend money in giving practical effect to them. We now had an opportunity of trying to do something. The Government of India had come forward in regard to the particular scheme to which the Bill before the Council would be first extended, and

offered to advance the necessary funds, subject to the proviso that a Bill for reimbursing to the Government the amount it had laid out should be passed before the 1st of January next. Therefore he did hope that the Council would do all they could—

[THE PRESIDENT said that he did not understand it to be a binding stipulation that the Bill should be passed before the 1st of January.]

THE HON'BLE ASHLEY EDEN said that the words had, no doubt, been used in the letter of the Government of India in a very positive and definite manner, but of course he was not in a position to say how far this condition might be open to modification.

[THE PRESIDENT said that he did not apprehend that there could be any object in naming the 1st of January more than the 1st of February. The stipulation made by the Government of India was merely an indication of the anxiety of the Government that measures should be taken to prevent the public funds being burthened with the cost of these works.]

THE HON'BLE ASHLEY EDEN continued—It was, at any rate, an indication of the anxiety of the Government of India that a Bill of this nature should be passed without delay, so that something might be done this working season. If we once placed the drainage of one district in a satisfactory state, we should then be able to see what chance there was of a Bill of a more general nature succeeding. The Bill, as it stood, was so drawn that it might be applied from time to time to other districts on the application of the owner of the land affected, or on the application of the collector. No work, however, could be undertaken without the concurrence of a board composed, not of Government officers only, but of independent members also, not less than four of whom were to be owners of estates in the district. There was no room here for arbitrary proceedings on the part of an over-zealous officer of Government, and it would be very easily seen that unless there was some absolute demand for drainage of this sort, and some ground that it would not interfere with private rights, there would be no question that such works would not be undertaken

He did not propose to go through all the sections of the Bill now: no doubt there were many points which, after discussion and revision by the committee to whom the Bill would be referred, might probably admit of considerable amendment and improvement.

BABOO DIGUMBER MITTER said that the primary object of the proposed measure appeared to be the removal of the cause of the epidemic fever which had been raging in some parts of Lower Bengal since a few years. The chief cause of that type of fever was said to be "defective drainage," and hence the necessity of encouraging and bringing into existence drainage works, the costs of which were to be borne by the holders of land, inasmuch as such works, it was held, while subserving the purposes of sanitation, must of necessity, at the same time, prove beneficial to agriculture. The question for consideration therefore was whether there was any connection between the defective drainage of the culturable lands and the epidemic, and whether those lands generally were likely to derive any benefit from drainage. With due deference to the professional experience of Mr. Adley, on whose report the proposed measure seemed to be entirely based, he (Baboo Digumber Mitter) must admit that he felt considerable difficulty in subscribing to the opinions expressed by Mr. Adley in that report as to the causes of this epidemic. Mr Adley assigned some thirty causes to account for it, and it was difficult to make out which of them he considered to be the proximate and the exciting cause. But as the hon'ble mover had made his choice of defective drainage as the existing cause, and had framed the proposed Bill under that conviction, he (Baboo Digumber Mitter) must necessarily confine his remarks to it. Now, referring to the report, he found that Mr. Adley had made mention of nearly a dozen conditions under which miasm, whatever that might be, but which was said to be the germ of the epidemic fever, was generated, and none of them was removable except by complete drainage, both surface and subsoil, which the geological formation of the country could not possibly admit of at any expenditure of money, even if the same were forthcoming. First in Mr Adley's catalogue of causes was the "marshes of jheels and jullahs, whether of fresh or salt water; the last are most pernicious; where salt and fresh water intermingle, putrefaction is more rapid."

Now, the whole country—he (Baboo Digumber Mitter) meant Lower Bengal—was full of these bheels or depressions, which were the natural receptacles of the drainage of their surrounding lands. At the lowest estimate he would take a hundred of these bheels to every district. In the eastern districts most of these hollows or bheels communicated directly with navigable streams during the monsoons, when they were from twelve to fifteen feet under water. These, he sincerely trusted, it was not pretended should be drained.

But suppose some of the inland bheels, as in the district of Hooghly, were capable of being drained, how were the hollows to be filled up, except by a gradual process of silting up by the sewage of the surrounding country finding its way into them? and when, after a series of years, they did silt up, they could not present a more elevated surface than the adjoining lands. But, unfortunately for Mr. Adley's scheme of dramage, and the removal thereby of the cause of the epidemic, the adjoining lands happened to be paddy lands, over which water lodged to the depth of two to three feet, and which continued in that state for at least four months in the year, and these lands, according to him, were equally productive of miasm. In his list of causes were found "moist lands and meadows, or a water-lodged subsoil when dried up under the sun;" again, "rice grounds, especially in jullahs, where the ears of the crops only are cut off, and the stalks left to rot in the water,—thus adding fuel to the fire" Now, was Mr. Adley prepared to drain these rice lands, which constituted nine-tenths of the culturable lands of Lower Bengal, and deprive the people, if possible, of the only food crop the lands were capable of bearing? But what made Mr. Adley so sure that these *bheels* and "rice grounds" were the causes of the epidemic fever? Was not Calcutta within a mile of an extensive salt-water lake, which, according to him, was still more generative of malaria than a fresh water one, and had it notwithstanding, within the memory of the present generation, ever suffered from a type of fever which was met with only since a few years in some of the most healthy localities of Bengal, and which decimated in the short space of a year and a half the population of a village where it broke out? On the contrary, was not Calcutta particularly healthy of late, and its death-rate reduced to that of some of the English towns, and yet was not the salt-water lake in existence in all its glory? But even as regards the villages surrounding the Dankoonee bheel or jullah, the dramage of which was considered so imperative in the cause of the epidemic that an estimate had been already made, and the drainage operations of which would perhaps be commenced upon immediately on the proposed measure becoming law, did we find anything like an epidemic there? In appendix B, subjoined to Mr. Adley's report, it was stated that in 26 villages surrounding that *bheel* the mortality in three years was only 2,145 amongst a population of 10,949 souls, or about 6½ per cent. per annum; whereas, in an epidemic village, one-third, and even half, the population was carried off in one year. But the idea that the *bheels*, which had existed since the formation of the country itself, and the rice lands, which meant the surface of the whole country, were the generating causes of the epidemic, and that they must be drained if the epidemic was to be checked, was so preposterous, that he would not detain the Council with further remarks on that head. Nothing was so natural as that those ugly and offensive sights—the stagnant bheels, rank vegetation, and paddy-fields immersed in water—would suggest themselves to a European, unaccustomed to those sights, as the most probable causes to account for a terrible epidemic; but he (Baboo Digumber Mitter) was really surprised to find that local conditions of soil and climate, which were as inseparable from us as our very skin, or perhaps more so, should be deliberately and professionally pronounced as causes adequate to account for a phenomenon of recent or casual occurrence, and the same gravely proposed to be adopted as the basis for action. If we were incompetent to grapple with this fell epidemic, as we had evidently proved ourselves to be, let us in all humility admit our inability but he protested against the adoption of any crude, ill-digested, and haphazard measure, which, without eliminating the cause of this epidemic, or in the least degree mitigating its virulence, only served to constitute an additional source of calamity to the people. It was not long since that, in the name of sanitation, and in the cause of this epidemic, a fierce crusade was waged against the vegetable kingdom, with what wisdom he would quote a most able and conscientious officer of Government

(he meant Mr. Dampier) to show. In his letter to Government, dated 4th January 1864 in paragraph 24, he says :—

"It has been said, that as their own neglect of sanitary precautions is the cause of the sickness under which they suffer, the villages have no claim to assistance from without; but I do not believe that the inhabitants of the tracts which have suffered have been greater delinquents in this respect than those of other parts of Bengal, or of this division, who have hitherto escaped. I have seen jungle as thick, and habitations as unclean, in the suburbs behind Alipore, as I have met with in the worst of the fever-stricken villages which I have visited; and it is by no means clearly established that the neglect of precautions which were within the means of the villagers is the primary cause of the epidemic, although doubtless that neglect has intensified the visitation."

With what success such measures could be carried out, even if initiated, would best appear from a letter from the Government of Bengal to that of India, dated 16th January 1868 :—

"It must specially be borne in mind that, under the conditions of Lower Bengal, any clearance of spontaneous vegetation, however thorough, is of the most transient effect only. To cut down the jungle and underwood is worse than useless; to root it up is extremely laborious and costly; and even when uprooted it is replaced by a no less luxuriant growth in the course of one or two rainy seasons, so that the question is not one of thoroughly clearing the villages once for all. To be effectual, active and organized measures must be continuous."

But, notwithstanding these sensible protests and wise deductions, the crusade was vigorously continued, in obedience, as he supposed, to professional opinion, and thousands of bamboo and mango topes were ruthlessly destroyed, and many a fever-stricken sufferer, whilst yet prostrated by sickness, was dragged from his sick bed to assist in this work of demolition of perhaps his only means of support. Such was the kind of measures which, in the name of humanity, had been hitherto tried for the removal of this epidemic—with what success the experience of a decade had amply testified.

However reluctant he (Baboo Digumber Mitter) might be to express himself dogmatically on questions like the present, he had however no hesitation in saying that the proposed measure, so far as it aimed at eradicating the cause of the epidemic, or even mitigating its severity, by draining the *bheels* and paddy lands, would meet with equal failure ; though, if the experiment were tried, it would be attended with still greater calamity to the people.

But while he deprecated in the strongest terms the drainage of bheels and rice-lands, with a view to the removal of the epidemic, he was fully sensible of the absolute necessity of drainage, so far as the villages were concerned. In fact, he had always held, and still held, that fever, wherever and whenever it had epidemically broken out in this country, was wholly and solely traceable to impeded village drainage, caused in many instances by railway feeders, which of late had sprung up in large numbers, wherever the same have crossed the drainage course of a village or villages. The same might be said of railways and other kinds of obstructions, whether they were offered in the passage of the rain water from a village to the adjoining paddy-field, or from the paddy-field into the bheel, or from the bheel into a navigable stream. To place before the Council in a clear light the manner in which the drainage of the Bengal villages was effected during the rains, he would, with permission, read some passages from a memorandum written by himself which would be found in the appendix to the report of the Epidemic Commission, of which he had the honor to be a member :—

"The drainage of all the villages in the epidemic districts, as elsewhere in Lower Bengal, is effected by the water first running into the nearest *paddy-fields* lying in the direction of their slope, thence it collects in the *bheels*, from which it rushes through khals into larger streams, which again communicate with navigable rivers. An obstruction occurring in any one of these conduits must interfere with the drainage, and its effects are felt more or less according to the proximity or remoteness of the obstruction from the scene of its influence. Accordingly, it has been found, as will be noticed more particularly hereafter, that the stoppage of the mouths of the different streams has not been productive of such serious consequences to the villages lying within their influence, as when the same occurred more in the vicinity of those villages.

The obstructions appear to have arisen chiefly from roads, and partly from embankments thrown up across khals for purposes of fisheries. I had neither time nor opportunities at command to trace in every

instance how and when the stoppage had taken place; enough, however, has been discovered to satisfy me of the correctness of my general conclusions.

In like manner, the Eastern Bengal Railway and its feeders, when the same have crossed the water-courses of villages lying on the eastern bank of the river Hooghly, and of others more inland, but situated to the west of the line, have obstructed the drainage of those places; the fall of the villages lying on the eastern bank of the Hooghly, as I have before observed, being towards the east, and consequently Chogdah, Kanchraparra, Halisohur, and many similarly situated, have suffered

I may here remark that the face of the country being perfectly flat, the drainage runs over the whole surface towards the direction of its slope, and consequently roads running transversely to it must of necessity intercept the drainage. Both the East Indian and the Eastern Bengal Railways are provided with capacious viaducts, whenever they have crossed what appeared to the eye as water-courses, but these are in reality khals and other large streams, which, as I have already observed, received the drainage in its flow from the villages over paddy-fields and bheels. The latter exhibit no visible signs of their being water-ways, and could not be known as such unless narrowly watched during the rains, though a road crossing them would more effectually shut out the drainage, and the evil consequences resulting therefrom would be much sooner felt, than when it crossed distant channels. Taking into consideration the number of roads which have sprung up of late, as also others in course of construction, and bearing in mind likewise the manner in which the drainage of the country is effected, and the difficulty thereby entailed of providing those roads with a sufficient number of outlets it is not improbable that in the cases of those villages which have not yet been examined obstructions to their drainage would, upon inquiry, appear to have proceeded chiefly from roads having been made without reference to the drainage level of the country, and without being provided with a sufficient number of water-courses."

He had no hesitation in saying that many villages in Lower Bengal, especially in the districts of Hooghly and Burdwan, were at this moment, and since some years, suffering from defective drainage, caused in some one or other of the various ways indicated in the passages he had quoted; and wherever the same had occurred, it had been invariably followed by the breaking out of this epidemic fever, the intensity of the attack being regulated by the complete or partial nature of the impediment offered to drainage. But the proposed measure, while it provided for the drainage of the bheels and paddy-fields, made no provision for the removal of the obstructions to the free drainage of the villages. Perhaps this was not quite an oversight, but the necessary result of the reluctance expressed by the Government of India to contribute funds for the purpose, as it would appear from the letter of the Government of India to that of Bengal, dated the 21st January 1870, which, with permission, he would read:—

"3. The Governor General in Council concurs fully in the remarks made in the commencement of the 6th paragraph of your letter under reply, and looks with the greatest interest on the further prosecution of these inquiries, which, he trusts, will lead to the early adoption of measures that may effectually alleviate the dreadful scourge that has affected these parts of Bengal during the last few years.

4. The Government of India will do all in its power to facilitate the prosecution of works required for improving the drainage of districts of Bengal subject to these dreadful epidemics, but it must impress upon His Honor the Lieutenant-Governor that it will be essentially necessary, in granting pecuniary aid towards carrying out any projects having this end in view to provide that the general revenues of the country shall not be permanently burdened with charges arising from their construction.

5. The Government of India will be prepared, when suitable arrangements have been entered into to secure the State against any future risk, to give all help in its power by lending money at the lowest rate of interest possible without actual loss to itself; and the Governor General in Council would leave it to His Honor the Lieutenant Governor to suggest how an arrangement of this sort may best be effected, whether by a voluntary association of landholders, or by a cess to be levied under a special law."

Whatever the cause might be, there was no question that the framer of the Bill under consideration, in a vain endeavour to combine sanitation by means of drainage with land improvement, which in this country were perfectly incompatible, had entirely omitted to make any provision for the drainage of the villages where the same might happen to be defective. As for land improvement, he hoped it was not pretended that drainage, *per se*, was beneficial to agriculture in a country where nine-tenths of the culturable lands were only fit for the cultivation of paddy, which required for its growth and maturity a continuous supply of water for four months. The only tracts of country where drainage works could be introduced with advantage were those which were covered by *bheels*. Some of these, he admitted, might be drained at a cost which might prove remunerative; but who was the proper person to decide upon such undertakings but

the owner or owners of the *bheel* themselves? Suppose, for instance, the drainage of the Dankoonee jullah, which had been estimated at three lakhs of rupees, was to cost three times that amount, which was not at all improbable, would the work prove remunerative? Again, was it not probable, at any rate possible, that the undertaking, after all, might turn out a failure, as many such projects often turned out to be? Was it in either case fair and equitable that the owner or owners of the *bheel* who had no choice in the matter, and on whom the undertaking was forced by a paternal Government in the name of sanitation and land improvement, should bear the loss? The only condition, he submitted, under which the State should lend its aid in such undertakings, was when the owners could agree amongst themselves to bear all the costs, whatever they might turn out to be, and furnish sufficient security for repayment of the same if advanced by Government. But a matter of this sort was best disposed of by means of private Bills, as was done for keeping open the navigation of the Kurrotia river, at the instance of the late Hon'ble Prosunno Coomar Tagore, and not by a Bill like the one sought to be introduced. So that from whatever point of view the proposed measure might be looked at, it failed entirely in its scope and object.

He, therefore, respectfully moved that the Bill be not read in Council.

Baboo Jotrendro Mohun Tagore said he certainly appreciated the object of the Bill, but he thought that it aimed at too much. It attempted to combine a system of drainage intended both for agricultural and sanitary purposes, which, he thought, would be impracticable; for in many places it would be found that the one scheme was opposed to the other. There would be a conflict of interests under the Bill. A large low paddy-field, for instance, where the retention of water was necessary, might be considered, in a sanitary point of view, to be injurious to the inhabitants of the villages adjoining. If it was proposed to drain this field for sanitary purposes, the zemindar could hardly be called upon to bear a portion of the cost, for he would have a greater right to ask for compensation on account of the land being rendered unfit for the growth of paddy. He (Baboo Jotcendro Mohun Tagore) thought that the two schemes should be altogether separate and distinct from each other. Where drainage was to be undertaken for purposes of agriculture alone, he thought no steps should be taken unless the majority of those interested should come forward and apply for the undertaking of the improvement. It was a question of pecuniary advantage which affected nobody but those interested in the land, and the commissioners, or their chairman, would not be justified in interfering with private rights in such a matter. In such cases, however, every individual ought to be made to bear his share according to the interest he had in the land, and the zemindar's estate alone should not be held hypothecated for the costs of the undertaking, leaving him to reimburse himself as best he could from his under-tenants. In many instances, it would be seen, the zemindar had not the slightest share in the advantage that might be gained by the drainage work.

It would be different where the drainage effected was for purposes of sanitation; there each person interested in the land should be called on to bear a fair share of the expense incurred. But even in this case, he submitted that where large tracts of country were suffering from an epidemic or some other such calamity, the Government might fairly be asked to bear its share of the burden. He found that the commissioner of Nuddea, in his letter dated the 18th of January 1864, said—

"Again, I do not think that a calamity which in this division extends more or less over 1,000 square miles of country, and has a tendency to spread, can be looked upon as being so purely local that Government are precluded from incurring any large expenditure from the public revenue for its mitigation and check. About eight years ago, when certain districts of the Rajshahye division had suffered severely from failure of crops, a special grant of Rs. 50,000 was made to the Pubna district alone, with the view of relieving the distress by giving the people work on roads, &c., which were to be constructed for this particular object. I trust, therefore, that the Government will be prepared to make a very considerable grant, as supplement to the expenditure which the villagers will themselves be forced to incur."

He need hardly say that he totally concurred in that opinion.

He would oppose the introduction of the Bill in its present shape.

MR. MONEY said that it appeared to him that the question for the consideration of the Council to-day was whether or not a measure compulsory in its provisions was required for the purpose of enabling the Government, when spending money purely for sanitary objects like that which was the immediate purpose of the Bill, or in consequence of the application of landlords for the improvement of their estates, to recoup itself for the expenditure, or a part of the expenditure, which it incurred. He certainly, as far as both of those subjects were concerned, considered that the object of the Bill was good, and one in which he ought to give Government every assistance.

But there were certain points in connection with the Bill to which he wished to call the attention of the Council, because he thought the Bill in its present shape went further than was expedient. By section 3 the Lieutenant-Governor had power to extend the provisions of the Bill to any district that he thought fit. And again by section 8 power was given to the chairman of the commissioners to make a proposal that the drainage of any tract might be improved. Such proposals would be made by the chairman of a committee consisting of, including himself, three officials of the district, and not less than four owners of land, who were not, however, necessarily owners of land in the part of the district to which the proposal might refer. Then section 16 ruled that the expenditure incurred in making any such improvement should be repaid by the proprietors of the land improved, not in proportion to the extent of the profit derived, but in proportion to the quantity of the land improved. The result would be this. An application might be made by the collector for the drainage of any part of the district in which he might deem such a measure desirable. To put it practically into figures, the carrying out of such an operation might cost the sum of two lakhs of rupees, which the Government would advance; but the profit to the land might be represented by a sum very much less than two lakhs of rupees. The greater portion of the cost might be for sanitation purposes, and, so far as the profit derived by the land was concerned, it might not amount to more than an increased rental of two or three thousand rupees, yet the whole of the money was to be taken from the zemindars of the land improved. He (Mr. Money) thought that the attention of the committee to whom the Bill would be referred ought to be drawn to this point in order that they might frame it so that the amount to be taken from the owners of the land should be in proportion to the benefit derived by each from the work.

There were a few other modifications, to one or two of which he would beg to call attention. He thought sections 7 and 10 required correction. By section 7 an application might come from an owner of land for the drainage of land, the greater portion of which may be a swamp, which he might wish to bring into cultivation. Then by section 10 the committee would have the application posted in a prominent part of the court-house of the collector of the district, and in every village in which any of the lands proposed to be drained or improved are situate; that was to say, a copy of the application would be posted on that part of the land which belonged to the man who made the application. But the scheme of drainage might affect land situated at a great distance from the proposed drainage works, and the owners of such land could not at once say whether the proposed work would affect them beneficially or injuriously, or indeed affect them at all. Until the proposition had taken definite shape, it would be very difficult for such persons to come forward and make objections; and yet it was expected that they should come forward within one month from the posting of the application. It would be impossible for them to know the scope and extent of the proposed work until a survey had taken place and the measure had taken a practical form. But according to the Bill the objections to the application were to be made within one month after notification, after which, if the commissioners agreed as to the propriety of the improvement, the lands were to be taken up, and then a survey was to be made; and after the survey the scheme and estimate were to be laid before the Lieutenant-Governor for his consent. He thought it would be advisable to give the owners of neighbouring estates two opportunities for making objections;—one when the application was made, and the other when the scheme had assumed a more definite shape, and the survey showed exactly what form the improvement would take.

Another matter for consideration was whether it would be advisable to limit applications of this kind to persons who were owners of not less than one revenue-paying village. He saw no reason why it should not apply as well to the owners of lakhiraj villages: if it was good for one it was good for the other.

There were some other matters of minor importance, which, however, he would reserve for the consideration of the committee.

Mr. Wordie said that it seemed to him that the information before the Council was too indefinite to enable them to pass this Bill—that we were not in a position to say that a certain tract of country had been drained and decided benefit had resulted from the work. Had we such information, it would then be time to bring in some such Bill; but at the present moment we did not even know whether such operations would prove beneficial or hurtful. For his part he must therefore oppose the Bill on its drainage provisions.

As regards measures for irrigation, he should support the Bill. There were many parts of the country where such measures, well considered and well brought forward, would be of incalculable benefit; but he did not think they should be mixed up with the question of sanitary improvement. He did not understand why that portion of this Bill should be separated from another measure for the same purpose which was to be brought forward to-day.

The Hon'ble Ashley Eden said in reply that he did not propose at present to go through all the objections to the Bill that the hon'ble member opposite (Baboo Digumber Mitter) had brought forward. He was unable to follow them all, but, as far as he understood his main objection, it was this, that this Bill dealt with the drainage of bheels and rice-lands, and not with the drainage of villages. He (Mr. Eden) thought he might dispose of that objection at once by quoting that excellent authority with which the hon'ble member had at such length fortified his views this morning. He alluded to the hon'ble member's own memorandum. The hon'ble member in that memorandum had said that the drainage of villages was closely connected with the drainage of bheels. His words were—

"The drainage of all the villages in the epidemic districts, as elsewhere in Lower Bengal, is effected by the water first running into the nearest paddy-fields lying in the direction of their slope, thence it collects in the bheels, from which it rushes through khals into larger streams, which again communicate with navigable rivers. An obstruction occurring in any one of these conduits must interfere with the drainage, and its effects are felt more or less according to the proximity or remoteness of the obstructions from the scene of its influence."

He then went on to show that if these khals got blocked up, the bheels got blocked up, and if the bheels got blocked up, the village drainage got blocked up. If therefore we opened the khals the bheels would be drained, and if the drainage of the bheels was effected, the village drainage would be opened. That was all that was proposed to be done; and so in reality this Bill was intended to do exactly what the hon'ble member said ought to be done.

Then again the hon'ble member quoted the case of Calcutta, pointed to the neighbourhood of a large jheel here, and said that the death-rate had improved so much in late years as to compare very favorably with the death-rate of some large towns in England. Here again it was obvious that Calcutta was sufficiently removed from the miasma of the salt-water lakes not to be affected by it; and, moreover, the drainage of the lake did not impede the drainage of Calcutta, but, on the contrary, the drainage here was passed out by the lake without any difficulty, which is what we want to do with the villages in the neighbourhood of the Hooghly jheels.

Then the hon'ble member had urged that the persons who owned the lands that were drained, being chiefly benefited, should therefore bear the cost of drainage, and yet he objected to this Bill, as if it sought to make some one else pay for these benefits. He (Mr Eden) did not understand the objection. The whole object of the Bill was to do precisely what the hon'ble gentleman objected that it did not do. A reference to the section of the Bill regarding recovery of charges would show that the land which benefited by the drainage was the land to bear the charge of the drainage expenses. Under the provisions of the Bill the persons who were to pay were the persons interested in the land improved.

He could see no other alternative than that the cost of the improvement should be paid by them or by the general public. There was no possible ground why it should be paid out of the general revenues. The hon'ble gentleman objected that the Bill was to be put in force to please a majority against the interest of the minority. He (Mr. Eden) thought it would be extremely unfair, if the people of a certain tract were all agreed as to the expediency of draining that tract, that some one person, who happened to have a small interest in the land, should be able to hold out and prevent anything being done. There were always some people who opposed a useful work from mere love of opposition; but it was necessary to coerce such persons when opposed to the public good, and this was the only coercion which the Bill contemplated.

As regards the other objections taken to the Bill, they were entirely questions of detail, which might be considered by the select committee.

The other hon'ble member opposite (Mr. Wordie) said that we should be in a much better position to bring forward a Bill of this sort if we could point to any district in which such improvements had been undertaken and had been successful. That was exactly what we were wishing to do. The people around the proposed scene of operations were anxious that the experiment should be tried; Government was willing to advance the money; every one really directly interested was in favor of the measure; and what we wanted to do was to try this experiment and then take it as a guide for similar operations in other districts in future years. We must make a beginning somewhere.

Baboo Digumber Mitter asked the president whether he was entitled to speak again.

The President said that the hon'ble member was not entitled to speak more than once on the motion before the Council, but if any statement which he had made had been misapprehended he was at liberty to explain what he had intended to say.

Baboo Digumber Mitter said that was precisely what he was going to address the Council about. The hon'ble mover of the Bill said that the system of drainage proposed to be adopted was exactly in consonance with his (Baboo Digumber Mitter's) views—that it was the impediment in the bheel which resulted in defective village drainage, and therefore the bheels must be drained. What he had pointed out was this, that the village drainage first led into the paddy-fields, then into the bheel, and from the bheels through khals into a navigable river. The impediment existing might be from the village into the bheel, or from the bheel into the river; wherever the impediment might be it would result in the defective drainage of the village. The impediment could not by any possibility exist in the bheel itself, but in the creek or khal which carried the overflow from the bheel to the river—

[The President here remarked that he was sorry to interrupt the hon'ble member, as he had gone beyond a mere explanation, and was entering into a fresh discussion entirely.]

The motion was then put and agreed to, and the Bill referred to a select committee, consisting of Mr. Money, Mr Wordie, Baboo Digumber Mitter, and the mover Mr. Eden, with instructions to report within three weeks.

EMBANKMENTS AND DRAINAGE.

Mr. Schalch postponed the motion, which stood in the list of business, for leave to bring in a Bill to provide for embankments and drainage.

The Council was adjourned to Saturday the 17th instant.

Saturday, the 17th December 1870.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*

T. H. Cowie, Esq., *Advocate-General,*
The Hon'ble Ashley Eden,
A. Money, Esq.,
A. R. Thompson, Esq.,
V. H. Schalch, Esq.,
T. M. Robinson, Esq.,
F. F. Wyman, Esq.,
Baboo Joteendro Mohun Tagore,
T. H. Wordie, Esq.,
Baboo Digumber Mitter,
and
Moulvy Abdool Lutteef Khan Bahadoor.

Moulvy Abdool Lutteef made a solemn declaration of allegiance, and that he would faithfully fulfil the duties of his office.

EMBANKMENTS AND DRAINAGE.

Mr. Schalch moved for leave to bring in a Bill to provide for embankments and drainage. In doing so he said that he proposed to state the circumstances which had led to the preparation of the Bill which he proposed to introduce, and the objects proposed to be attained by the measure. As regards those circumstances, he did not think he could state them more distinctly and briefly than they were stated in the correspondence which had passed on the subject between the Government of India and the Government of Bengal in 1868. It appeared that in 1868 a certain portion of the 24-Pergunnahs was inundated by the breakage of the dams bordering certain estates, the proprietors of which refused to effect the necessary repairs. In a letter from the Secretary to the Government of India in the Public Works Department to the Joint-Secretary to the Government of Bengal in the Public Works Department, dated 20th October 1868, it was observed :—

"4. It appears that last year a certain portion of this district was inundated in an injurious manner, owing to the obstruction of one of the natural drainage lines by the proprietor of the estate through which the channel passed, for the purpose of benefiting his own lands. It is also gathered that the proprietor refused to remove the obstruction when desired to do so by the executive engineer, and that no remedy was applied. It further appears that this year the same lands, stated to be 30 or 40 square miles in area, were again submerged from the same cause, and on application being made to the magistrate for permission to cut the dam on the khal, he withheld his sanction until 'the requisite legal formalities' were complied with, though he admitted that the removal of the bund was necessary for the public good. The flood must have occurred about the middle of June, and the order of the Lieutenant-Governor on the subject towards the end of August, directing that the needful legal forms should be gone through, shews that the evil was not remedied for at least two months.

5. If, as appears to be the case, the magistrate was technically justified in his action in the matter, and if, as also appears to be the case, there is no officer having summary powers of action on such occasions, the conclusion seems inevitable that the existing law is defective, and should be modified. The Governor General in Council is of opinion that there should be a special officer in every embanked district in Bengal, not only empowered, but *bound* to do forthwith all that the public good requires in respect to the control of the natural channels which carry off the surface waters of the country, and to take all needful measures for giving relief from inundations of an injurious character. That recourse to the ordinary law courts should be necessary in such emergencies, seems opposed to reason. His Excellency in Council will be glad to hear that this subject has received the careful attention of the Hon'ble the Lieutenant-Governor, and that any measures necessary for giving all possible security against the recurrence of the evils that have been referred to have been matured and carried into operation."

In reply to that letter the Lieutenant-Governor observed :—

"With respect to the remarks in paragraph 4 of your letter, the Lieutenant-Governor begs to point out that it is necessary for Government to proceed with great caution in interfering with established rights, or what may have come to be so considered amongst a population so well aware of their legal rights and so tenacious of them as that of Lower Bengal, and that though a prompter and more arbitrary proceeding would have been more effective in the instance alluded to, yet, in the light of experience already gained, the Lieutenant-Governor did not consider it expedient to over-rule the decision of the revenue officers.

He is, at the same time, quite disposed to think that the existing law is not sufficiently stringent to meet such cases, and he had already called for the opinions of qualified local officers as to the points in which the present Embankment Act requires amendment."

It was in accordance with the opinions thus called for that this Bill had been framed. He had hoped that the statement of objects and reasons he had prepared would have been in the hands of hon'ble members, which would have rendered it unnecessary for him to take up much of the time of the Council. As, however, that had not been done, he would briefly state the objects sought to be attained by the present measure.

The first object was, that in cases of emergency such as had been described, the embankment officers should have the power to interfere at once for the protection of the people from the effects of internal inundation, or by preventive measures to protect them from the consequences of external inundation. It was therefore proposed to give embankment officers such powers as were suitable to the circumstances of the case, subject to certain conditions, one of which was, that if it ultimately proved that these works were not necessary, the former state of things would be restored at the expense of the Government; and also that if it were proved that injury had been done to private interests, compensation would be given for such injury. It frequently happened that in large districts portions of the country and individual estates would suffer from these works, although they might still be necessary for the protection of the great mass of estates, and it was but fair that compensation should be given for such loss and injury.

Secondly, it was proposed to include, under the definition of "embankments," many works which, although not, strictly speaking, embankments, were intimately connected with them, and the maintenance of which was essential for the efficient condition of embankments. It was further found that the natural drainage of the country was frequently obstructed by zemindars making small bunds, which caused very considerable damage to the embankment works, and, by obstructing the free course of the drainage, injuriously affected large tracts of country. It was proposed, therefore, that power should be given to remove all such obstructions to these drainage channels; and this was a measure which, he thought, judging from what fell from the hon'ble member opposite (Baboo Digumber Mitter) on the last occasion when the Bill to facilitate the drainage and irrigation of districts was under consideration, would be found to be useful in removing those obstructions to drainage which were, in his opinion, in a great measure the cause of the prevailing epidemic.

Another, and one of the most important objects sought to be attained, was the better apportionment of the expense of the construction and maintenance of embankments which the proprietors of estates in the vicinity of such embankments might be bound to keep up. At present the mode of procedure for calculating how the apportionment of such expense was to be made, and the manner of recovering the same under the existing Acts, was found to be insufficient and ineffectual. Of course, when the embankment which a proprietor was bound to keep in order merely protected his estate, the question was simple; but it frequently happened that these embankments extended over a large tract of country, and covered a great many estates, and it then became a matter of great difficulty to find out in what proportion each estate had to furnish its legitimate share of the expense of maintaining them. The Bill laid down provisions more distinctly to apportion the expenses amongst such estates, and for recovering payment according to the benefit derived by each estate.

It was also proposed to render more stringent the penalties for the protection from wilful injury of embankment and drainage works, and to afford greater facilities for applications for the construction of new embankments and new drainage works.

Those were the chief amendments proposed in the Bill; but advantage had been taken, while embodying these amendments, to consolidate the existing laws with regard to embankments, and with regard to the mode of recovering the cost of lands taken up for purposes of embankments and drainage, and at the same time to incorporate in the Bill the provisions of the Act of the imperial Government for the acquisition of land for public purposes which were found to bear on the question of the acquisition of land for embankments.

There seemed to be an impression that there was an intention to introduce new principles into the law; but, from what he had said, it would be perceived that the object of the Bill was rather in amendment of the existing law, than the introduction of any new principle.

With these remarks he would beg to move for leave to bring in the Bill.

The motion was agreed to.

RECOVERY OF ARREARS OF REVENUE.

MR. MONEY moved that the Bill to amend the procedure for the recovery of arrears of land revenue in respect of tenures not being estates be read in Council. He need say very little more with respect to the new section proposed to be introduced in substitution of section 11 of Act VII of 1868 beyond this, that the object of the measure was to assimilate the procedure with regard to the sale of tenures for arrears of revenue with that which already existed with regard to the sale of estates for similar arrears. The present amendment merely carried out that object. In the Bill, as printed, there was a clerical error in line 18, in which section 6 of Act XI of 1859 was printed for section 5; and in the statement of objects and reasons, in the second paragraph of which are the words "other than arrears of estates under attachment by order of any judicial authority," the words should have been "and for arrears of estates."

The motion was agreed to, and the Bill referred to a select committee (with instructions to report in two weeks), consisting of the Advocate-General, Mr. Thompson, Moulvy Abdool Luteef, and the mover Mr. Money.

VILLAGE CHOWKEEDARS.

MR. RIVERS THOMPSON moved that the report of the select committee on the Bill to amend the Village Chowkeedaree Act, 1870, be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the select committee.

The motion was agreed to.

Sections 1 to 4 were agreed to.

Section 5 provided that subsequent assessments should be made and published according to the provisions of section 16 of Act VI of 1870.

The ADVOCATE-GENERAL said that this section appeared to have been introduced by the select committee with the view of making the matter more clear, but he thought the section ought to be omitted for two reasons: first, because it seemed to be quite superfluous, as all subsequent assessments would be assessments commencing with the first day of the year; and also because in many cases the object of the section might not be understood, and might cause confusion. The section said that every subsequent assessment should be made and published according to the provisions of section 16 of the Act, and the 17th section of the Act, which would also be applicable, provided that the punchayet, instead of making a new assessment, might revise or continue the existing assessment. If the present section stood, it would seem to prevent the continuation of the existing assessment. Therefore he thought it would be better to leave the matter to the ordinary operation of the principal Act, and he would move that section 5 of the Bill be omitted.

MR. RIVERS THOMPSON said that the section was inserted at the last meeting of the committee for the reasons stated by the Advocate-General. It was thought that it would make the matter clearer; but the objection taken had since struck him, as, under section 17 of the Act, the assessment in force might be continued: and if this section stood, it might have the effect of causing it to be supposed that a new assessment must be made. He therefore agreed that the section should be omitted.

The motion was then agreed to.

Section 6 and the preamble and title were agreed to.

Mr. Rivers Thomson moved that the Bill be now passed.

Baboo Digumber Mitter said that before the Bill was passed, he would take the opportunity of moving certain amendments, which, without interfering with the principles, or in the least degree marring the aim and scope of the Act, would, he felt convinced, afford great relief to the rate-payers as well as the rate-collectors. By the 21st section of the Act the rate was made payable by equal monthly instalments. Such frequent visits of the tax-gatherer—

The Advocate-General thought he must rise to order. The subject of the remarks which the hon'ble member was making was not a matter before the Council at all. The Council was deliberating on the Bill as it was recommended by the select committee to be passed.

The President said he understood the hon'ble member's intention to be to move for some addition to the Bill now before the Council. He thought the form which the hon'ble member's motion should take must be to substitute, for the motion before the Council that the Bill be passed, an amendment to the effect that the motion before the Council be not accepted; and then, if his motion were carried, it would be open to the hon'ble member to move a further amendment (having given notice of his intention so to do) at a subsequent meeting of the Council. It would then be for the Council to say whether they would consent to the motion or not. It would be an inconvenient precedent to have a substantive amendment of the nature contemplated, without having any previous notice of such amendment before the Council.

Baboo Digumber Mitter said, his object was to make the payment of the tax recoverable quarterly, instead of monthly, which would serve just as well if it was introduced by a new section in the present Bill as if it stood in the original Act. He then moved that the Bill be not passed, so as to give him an opportunity of bringing forward the amendments which he contemplated.

The question that the Bill be passed was then put, and the President having declared that he thought the "Noes" had it, a division was called for. But, before the recording of the votes had been completed—

Mr. Rivers Thompson said that having conferred with the hon'ble mover of the amendment on the subject, he (Mr. Thompson) had agreed to withdraw his motion for the passing of the Bill. The effect of the hon'ble member's amendment, if carried, would be to cancel the Bill, which would entail the introduction of a new Bill and the loss of another month in carrying it through all its stages. He (Mr. Thompson) would therefore suggest that it would be a preferable course that the motion for the passing of the Bill should be withdrawn; and, with the permission of the Council, he proposed to do so, in order that the hon'ble member might give notice of the amendments he intended to bring forward.

The motion was then by leave withdrawn.

Baboo Digumber Mitter gave notice of his intention to move at the next meeting for the introduction of a section for substituting quarterly for monthly payments of the assessments raised under Act VI of 1870.

The Council was adjourned to Saturday, the 31st instant.

By order of the President the Council was further adjourned to Saturday the 7th January 1871.